EDITOR'S NOTE

THE FOLLOWING PAGES WERE POOR HARD COPY AT THE TIME OF FILMING. IF AND WHEN A BETTER COPY CAN BE OBTAINED, A NEW FICHE WILL BE ISSUED.

91-617
91-618
(2)
FILED
OCT 15 1991
OFFICE OF THE CLERK

Nos. 91- _____

In The

Supreme Court of the United States

October Term, 1991

Daniel P. SHEEHAN and THE CHRISTIC INSTITUTE,

Petitioners,

versus

John HULL, Moises Nunez, Jorge Gonzalez, Adolfo Calero, Robert Owen, Thomas Posey, John Singlaub, James McCoy, Ronald Joseph Martin, Sr., Rafael "Chi Chi" Quintero, Mario Delamico, Thomas Clines, Theodore Shackley, Richard Secord, and Albert Hakim,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

---

Petitioners' Joint Appendix
Volume I

Eugene R. Scheiman
805 Third Avenue
New York, New York 10022
(212) 702-5700

Counsel of Record

TABLE OF CONTENTS

Avirgan v. Hull, 932 F.2d 1572
(11th Cir. 1991) . . . . . 1 - A

Avirgan v. Hull, 691 F.Supp. 1357
(S.D.Fla. 1989) . . . . . 24 - A

Avirgan v. Hull, 705 F.Supp. 1544
(S.D.Fla. 1988) . . . . . 31 - A

Avirgan v. Hull, 125 F.R.D. 189
(S.D.Fla. 1989) . . . . . 49 - A

Avirgan v. Hull, Opinion Denying Appellants'
Petitions for Rehearing En Banc . . . . . 53 - A

Affidavit of Daniel P. Sheehan in Opposition
to Defendants' Motion for Sanctions,
filed September 12, 1986 . . . . . 55 - A

Declaration of Plaintiff's Counsel,
filed March 31, 1988 . . . . . 89 - A

Affidavit of Daniel P. Sheehan,
filed December 12, 1986 . . . . . 391 - A

UNITED STATES COURT OF APPEALS
ELEVENTH CIRCUIT

Filed June 18, 1991
Reported as Avirgan v. Hull,
932 F.2d 1572 (11th Cir. 1991)

Tony AVIRGAN and Martha Honey,
Plaintiffs-Appellants,

v.

John HULL, Adolfo Calero, Robert Owen, John K. Singlaub, Ronald Joseph Martin, Sr., James McCoy, Rafael "Chi Chi" Quintero, Mario Delamico, Thomas Clines, Theodore Shackley, Albert Hakim, and Richard Secord,
Defendants-Appellees,

Bruce Jones, et al.,
Defendants.

Tony AVIRGAN and Martha Honey,
Plaintiffs-Appellants,

v.

John HULL, Moises (Dagoberto) Nunez, Jorge Gonzalez, Adolfo Calero, Robert W. Owen, Thomas Posey, John K. Singlaub, Ronald Joseph Martin, James McCoy, Rafael "Chi Chi" Quintero, Mario Delamico, Thomas Clines, Theodore Shackley, Albert Hakim and Richard Secord,
Defendants-Appellees,

Rene Corbo, et al.,
Defendants.

Tony AVIRGAN and Martha Honey,
Plaintiffs-Appellants,

Daniel P. SHEEHAN and The Christic Institute,
Non-Party-Appellants,

v.

John HULL, Moises (Dagoberto) Nunez, Jorge Gonzalez, Adolfo Calero, Robert Owen, John Singlaub, James McCoy, Ronald Joseph Martin, Sr., Rafael "Chi Chi" Quintero, Mario Delamico, Thomas Clines, Theodore Shackley, Richard Secord, and Albert Hakim,
Defendants-Appellees,

Rene Corbo, et al.,
Defendants.

Tony AVIRGAN and Martha Honey,
Plaintiffs-Appellants,

Daniel P. SHEEHAN and the Christic Institute,
Non-Party-Appellants,

v.

John HULL, Moises (Dagoberto) Nunez, Jorge Gonzalez, Adolfo Calero, Robert W. Owen, Thomas Posey, John Singlaub, James McCoy, Ronald Joseph Martin, Sr., Rafael "Chi Chi" Quintero, Mario Delamico, Thomas Clines, Theodore Shackley, Richard Secord, and Albert Hakim,
Defendants-Appellees,

Rene Corbo, et al.,
Defendants.

Nos. 88-5720, 89-5143, 89-5232
and 89-5515.

Appeals from the United States District Court for
the Southern District of Florida.
(D.C. No. JLK-CIV-86-1146)

Michael W. Burnbaum, Coral Gables, Florida; Raul de Cubas of Diaz Silviera and Associates, Coral Gables, Florida; Robert F. Garcia-Esquerro, Miami, Florida; Thomas C. Green and Paul Castellitto of Green & Lankford, Washington, D.C.; Leonard Greenbaum and Thomas Hylden of Sachs, Greenbaum & Taylor, Washington, D.C.; Theodore Klein of Fine, Jacobson, Schwartz, Nash, Block & England, Miami, Florida; Luis S. Konski of Walton, Lantaff, Schroeder & Carson, Miami, Florida; Jack McKay and Jane Sullivan of Shaw, Pittman, Potts & Trowbridge, Washington, D.C.; Joseph Portuondo of Fitzgerald, Portela & Portuondo, Miami, Florida; Edwin R. Smith, Evansville, Indiana; Thomas R. Spencer of Spencer, Bernstein, Seeman & Klein, Miami, Florida; for Defendants-Appellants.

Eugene R. Scheiman, New York, New York; Daniel P. Sheehan of the Christic Institute, Washington, D.C. (Phil Hirschkop, Alexandria Virginia; Joanne Royce and Lanny Sinkin of the Christic Institute, Washington, D.C., with them on the briefs) for Plaintiff-Appellees Avirgan and Honey.

Eugene R. Scheiman, New York, New York; (Joanne Royce and Lanny Sinkin of the Christic Institute, Washington, D.C., with him on the briefs) for Appellee the Christic Institute.

Morton Stavis of Center for Constitutional Rights, New York, New York (Joan Gibbs, Katherine Gorove, and Stephanie Y. Moore of Center for Constitutional Rights, New York, New York with him on the briefs) for Appellee Daniel P. Sheehan.

Before HATCHETT and BIRCH, Circuit Judges, and RONEY, Senior Circuit Judge.

HATCHETT, Circuit Judge.

Two journalists, their lawyers, persons and entities associated with the journalists and lawyers, in this consolidated appeal involving the Nicaraguan Contra affair seek reversal of the district court's orders granting summary judgment against them and imposing sanctions in excess of one million dollars. We affirm the district court.

FACTS

On May 30, 1984, Tony Avirgan and his wife, Martha Honey, appellants, who are American journalists based in Costa Rica and cover Central America for various news agencies, attended a press conference of Contra leader Commandant Eden Pastora at the campground of the Southern Contra Force in La Penca, Nicaragua. About thirty journalists traveled to the guerilla campground. At the press conference, a bomb exploded killing eight people and wounding numerous others. Avirgan and Honey allegedly suffered personal injuries, damages to television camera equipment, loss of business due to the bombing, and loss of consortium. Avirgan and Honey claim that the bombing was the product of a criminal racketeer influenced and corrupt organization (RICO) enterprise consisting of the appellees

with the goal of overthrowing the government of Nicaragua.[1] The appellees include alleged Central Intelligence Agency operatives, military intelligence personnel, arm merchants, mercenaries, and Colombian drug lords. Most of the allegations are based geographically in Nicaragua, but some allegations accuse various appellees of anti-communist operations in Cuba, Southeast Asia, Iran, Libya.

Chief Judge James Lawrence King, in his thorough opinion, summarized Avirgan and Honey's theory of their case as follows:

> It is the theory of plaintiffs' case that the defendants established an enterprise, the purpose of which was to violate the principles espoused in the Neutrality Act and that all of the alleged patterns of racketeering activity were performed to promote the goal of this enterprise. Central to the alleged violations of each subsection of § 1962 is the plaintiffs' purported Neutrality Act enterprise. The plaintiffs allege that in May, 1983 the defendants Francisco Chanes, Moises Nunez, Hector Cornillot, Rene

---

[1] The status of persons involved In these cases is as shown below:
Appellants: Tony Avirgan (Plaintiff), Martha Honey (Plaintiff), The Christic Institute, and Daniel P. Sheehan.
Appellees: John Hull, Moises Dagoberto Nunez, Jorge Gonzalez, Adolfo Calero, Robert W. Owen, John K. Singlaub, Ronald Joseph Martin, Sr., James McCoy, Thomas Posey, Rafael Quintero, Mario Delamico, Thomas Clines, Theodore Shackley, Albert Hakim, and Richard Secord.
Defendants only: Bruce Jones, Rene Corbo, Francisco Chanes, Ricardo Gris, William Gris, Robert P. Pallais, Hector Cornillot, and Frederico Saenz.
Named as defendants but not served: Felipe Vidal Santiago, Ramon Cecilio Palacio. Amac Galil, Alvaro Cruz, Pablo Escobar, and Jorge Ochoa.

Corbo and Felipe Vidal Santiago established an enterprise. The purpose of the enterprise was to launch a Cuban/American mercenary expeditionary force against the Republic of Nicaragua, from Costa Rica, along the 'Southern Front.'

The plaintiffs also contend that these defendants established a cocaine smuggling operation through Costa Rica to finance the workings of this enterprise in violation of the Neutrality Act. 18 U.S.C. § 960 (1986). It is asserted that the original purpose of these individuals was to assist an indigenous Nicaraguan group, the Revolutionary Democratic Alliance ('ARDE').

The ARDE was engaged in guerilla attacks against Nicaragua under the leadership of Eden Pastora. The plaintiffs maintain that sometime after this original joinder of forces the enterprise decided to remove Pastora as leader of ARDE in order to merge ARDE into alliance with the Honduras based contra group, the Nicaraguan Democratic Force ('FDN') and facilitate its narcotics trafficking in Costa Rica.

Avirgan v.Hull, 691 F.Supp. 1357, 1363-64 (S.D.Fla.1988).

PROCEDURAL HISTORY

On May 29, 1986, Avirgan and Honey filed a complaint in the United States District Court for the Southern District of Florida. Avirgan and Honey's racketeering allegations include the following: the attempted murder of Eden Pastora; the murder of eight persons at the press conference in La Penca; the attempted murder of Avirgan at the La Penca bombing; the trafficking of arms and explosives in violation of state and federal law; the transferring of funds from illegal weapons and explosives dealings; the conspiracies to murder Pastora on two occasions; the conspiracy to kidnap informants - Carlos Rojas Chinchilla and a person identified

only as "David"; the murder of David; the conspiracy to transport cocaine into the United States; and the conspiracy to murder the United States Ambassador to Costa Rica. The primary allegation, however, is that Amac Galil, disguised as a journalist named Per Anker Hansen, detonated the bomb at the La Penca press conference, and acted in concert with the twenty-eight other persons named in the amended complaint.

Avirgan and Honey also allege state law claims which include: battery, loss of consortium, assault, intentional infliction of mental distress, trespass, damage to personal property, and a state RICO claim under Fla.Stat.Ann. § 895.03.

In their amended complaint, Avirgan and Honey specified the relevant time period as May, 1983, through May 29, 1986. Thus, for discovery purposes, the court granted the time limit specified plus six months before the first alleged overt act, which occurred in May, 1983. The district court limited discovery to a four-year period covering the relevant alleged conspiratorial time period of December, 1982, until November, 1986. The district court also limited the subject matter discovery to the purchase or sale of military equipment; weapons; or explosives; transactions in illegal drugs; the operation of the alleged Neutrality Act enterprise; and any action resulting in or causing injury to Avirgan and Honey.

After two years of discovery, several appellees moved for summary judgment alleging that Avirgan and Honey had failed to state a claim under RICO. In addressing this motion, the district court thoroughly analyzed the evidence Avirgan and Honey presented, in order to determine whether they had shown genuine issues of material fact. Finding much of the evidence inadmissible, the district court ruled

that Avirgan and Honey failed to prove that the appellees were the proximate cause of their injuries and granted appellees' motions for summary judgment on the federal and state law claims.[2]

The district court, by a subsequent order, granted appellees' motions for costs and attorney's fees, ruling that the abuse of the judicial process required that Avirgan and Honey make the appellees whole by paying the fees the appellees were forced to spend in defending the lawsuit. Moreover, the district court ruled that liability for costs and fees rests jointly and severally with Avirgan and Honey, Daniel Sheehan (Avirgan and Honey's lawyer) and the Christic Institute.[3]

On appeal, this court consolidated appellants appeals of the district court's (1) grant of summary judgment; (2) the award of attorney's fees and costs; (3) motions for clarification order; and (4) the clarification order.[4]

---

[2] Avirgan and Honey do not challenge the grant of summary judgment on the state law claims. As such, we deem those claims abandoned. *Rogero v. Noone* 704 F.2d 518, 529 n. 1 (11th Cir.1983).

[3] The Christic Institute is a tax-exempt law firm which funded the litigation.

[4] The appeal on the merits is 88-5720; the other three appeals are from the district court's orders on fees (89-5143,89-5232, and 89-5515).

On appeal, numerous persons and entities appeared, through brief, as amicus curiae, including: Church of the Brethren, Church Women United, Conference of Major Superiors of Men, Peace Fellowship of the Christian Church (Disciples of Christ), Leadership Conference of Women Religious, the Maryknoll

CONTENTIONS

Avirgan and Honey contend that the district court ruled improperly in granting summary judgment, in issuing certain orders prior to summary judgment, and in denying relief for cost of injury and equipment due to the bombing. Additionally, Avirgan, Honey, the Christic Institute, and Daniel Sheehan challenge the award of costs and attorneys' fees.

The issues presented on appeal are: (1) whether the district court properly granted summary judgment on the ground that the appellants failed to show that the appellees caused their injuries; (2) whether the district court erred in issuing certain orders prior to summary judgment; and (3) whether the district court erred in awarding attorneys' fees and costs to the appellees.[5]

Fathers and Brothers, General Conference Mennonite Church, National Council of Churches of Christ in the U.S.A., Unitarian Universalist Association, the Womens Division of the United Methodist Board of Global Ministries; Professor Melissa Nelken, Professor Carl Tobias, Professor Mary Twitchell, Trial Lawyers for Public Justice, and Public Citizen and Alliance for Justice.

[5] Avirgan and Honey also request damages for injuries and ask that if the case is remanded for further proceedings, the proceeding not be conducted by Chief Judge James L. King. Since we affirm the district court, these issues are moot.

DISCUSSION

1. Summary Judgment

[1,2] Consideration of the district court's grant of summary judgment requires plenary review and application the same legal standards that bound the district court. *Rollins v. TechSouth, Inc.*, 833 F.2d 1525, 1527 (11th Cir.1987). If the party seeking summary judgment meets the initial burden of demonstrating the absence of a genuine issue of material fact, the burden then shifts to the nonmoving party to come forward with sufficient evidence to rebut this showing with affidavits or other relevant and admissible evidence. *Celotex Corp. v. Catrett*, 477 U.S. 317, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986); Fed. R.Civ.P. 56(e). A nonmoving party, opposing a motion for summary judgment supported by affidavits cannot meet the burden of coming forth with relevant competent evidence by simply relying on legal conclusions or evidence which would be inadmissible at trial. *Fontenont v. Upjohn Co.*, 780 F.2d 1190, 1195 (5th Cir.1986).

The evidence presented cannot consist of conclusory allegations or legal conclusions. *First National Bank of America v. Cities Serv. Co.*, 391 U.S. 253, 289, 88 S.Ct. 1575, 1592, 20 L.Ed.2d 569 (1968).

A. RICO Claim

[3] Avirgan and Honey's RICO claim is founded upon 18

U.S.C. § 1964(c).[6] Thus, they must prove three essential elements: (1) a violation of section 1962; (2) injury to business or property; and (3) that the violation caused the injury. *O'Malley v. O'Neill* 887 F.2d 1557, 1561 (11th Cir. 1989).

Sections 1962(a), (b), and (c) of title 18 make criminally liable those who engage in, or aid and abet another to engage in, a pattern of racketeering activity if they also do the following: invest income derived from the pattern of racketeering activity in the operation of an enterprise engaged in interstate commerce (section 1962(a)); acquire or maintain, through the pattern of racketeering activity, any interest in or control over such an enterprise (section 1962(b)); or conduct, or participate in the conduct of, the affairs of such an enterprise through a pattern of racketeering activity (section 1962(c)). Section 1962(d) makes it a crime to conspire to violate section 1962(a), (b), or (c). [Footnote omitted.]

Pelletier v. Zweifel, 921 F.2d 1465, 1495-96 (11th Cir.1991).

1. Evidence

As to the evidence Avirgan and Honey presented, the district court found:

The plaintiffs have not made a showing of a genuine

---

[6] Title 18 U.S.C. § 1964(c) reads as follows:
Any person injured in his business or property by reason of a violation of section 1962 of this chapter may sue therefor in any appropriate United States district court and shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee.

> issue of material fact with respect to any of their allegations concerning the cause of their injuries. Causation is an essential element of a RICO action. Accordingly, the defendants who have moved are entitled to summary judgment.

Avirgan. 691 F.Supp. at 1377.

[4] Avirgan and Honey argue that they were not obligated to produce evidence gathered during pretrial discovery which demonstrated that Galil had committed the bombing and was a member of the enterprise, that C-4 was an ingredient of the bomb, or that they and their news sources were threatened and had crimes committed against them. We disagree. The evidence Avirgan and Hóney presented is scant almost nonexistent, on the important issue of causation. Avirgan and Honey presented the *La Penca Report*, a publication they prepared, which concludes that Amac Galil, a/k/a Per Anker Hansen caused the bombing. The district court correctly determined that this evidence was inadmissible.

Also, Avirgan and Honey submitted a one-page translation of a five-page document the Costa Rican OIJ prepared. The OIJ, according to Avirgan and Honey, is the Costa Rican equivalent to the United States Federal Bureau of Investigation (FBI). The translation is uncertified, unsigned, and does not conclude that Galil was responsible for the bombing. It merely concludes that debris found at the sire of the bombing matched that of a box Galil carried. This evidence is circumstantial, speculative, and of little weight.

Avirgan and Honey further argue that because none of the appellees disputed Galil's role in the bombing, summary judgment was improper. According to Avirgan and Honey, although some appellees claim that they did not know Amac

Galil or have direct or indirect contact with him, this does not mean that all of the appellees are unassociated with the enterprise. In other words, Avirgan and Honey argue that no one has disproved Galil's existence, or disproved the existence of the enterprise, or disproved Galil's association with the enterprise. Thus, say Avirgan and Honey, the enterprise existed; Galil existed; Galil set off the bomb; and we were injured.

[5] Avirgan and Honey note that this circuit has ruled that a RICO enterprise may be an "amoeba-like" structure or a loose informal association. See *United States v. Cagnina*, 697 F.2d 915, 921 (11th Cir.1983), *cert denied*, 464 U.S. 856, 104 S.Ct. 175, 78 L.Ed.2d 157 (1983). We have so held. Nevertheless, Avirgan and Honey presented no evidence to indicate that Galil committed the bombing or was a part of the alleged enterprise. No admissible evidence was ever produced to show that Galil even existed.[7] The evidence completely failed. Galil was never served with a complaint or scheduled for deposition. All parties realized that responsibility for the La Penca bombing was a key issue on summary judgment. Yet, Avirgan and Honey, after years of discovery, brought forth nothing on the causation issue.

[6] Likewise, without submitting admissible evidence, Avirgan and Honey alleged that the appellees were liable for threats to and the kidnapping of Carlos Rojas Chinchilla and

---

[7] At one point, Avirgan and Honey argue that Theodore Shackley's counsel admitted Galil's existence. Shackley's counsel's statement was, "I don't believe that the plaintiffs have any proof that any of the defendants was engaged in the La Penca bombing or connected to the La Penca bombing other than this fellow that they describe as Amac Galil." This statement is not evidence that counsel admitted Galil's alleged role in the bombing.

the murder of "David." According to Avirgan and Honey, Chinchilla and David served as their informants about the bombing. They specifically named Hull, Jones, Corbo, Vidal, Chanes, Nunez, Cruz, Saenz, Posey, Owen, and Palacio as participants in the crimes against David and Carlos, both individually and through agents. Avirgan and Honey assert that only three appellees, Hull, Owen, and Jones, moved for summary judgment.[8] They argue that Owen was in Central America at the time of an execution of a "Sandinista informant" believed to be David. According to Avirgan and Honey, it was Owen's responsibility to demonstrate that the executed Sandinista informant was not David, or prove that he had no knowledge of, or did not condone the execution. It is their theory that the omission of this evidence, which Owen did not produce, should serve as a favorable inference for them. *Lampkin v. Liberia Athene Transport Co., Ltd.*, 823 F.2d 1497, 1499 (11th Cir.1987). This absence of evidence does not result in a favorable inference.

Avirgan and Honey further contend that Hull, Jones, Corbo, Vidal, Chanes, Nunez, Cruz, Saenz, Posey, and Owen threatened to murder them because they connected Hull and Vidal to the threats against their family. Again, theories, allegations, and speculation; but, no evidence.

---

[8] The following persons filed motions for summary judgment: Jones, Owen, Hull, Calero, Singlaub, Shackley, Martin, McCoy, Quintero. Delamico, Clines, Hakim, and Secord. Gonzalez filed an untimely summary judgment motion.

Defendants Santiago, Palacio, Galil, Cruz, Escobar, and Ochoa were never served and were dismissed.

Nine defendants did not move for summary judgment: Corbo, Nunez, Chanes, R. Gris, W. Gris, Pallais. Cornillot, Saenz, and Posey. Nunez moved. after the pretrial conference, to vacate the entry of default against him and to quash the service of process.

2. Causation

[7] In a civil RICO action, the plaintiff must prove that the criminal conduct in violation of section 1962 directly or indirectly injured the plaintiff's business or property. *Haroco v. American Bank and Trust Co. of Chicago,* 747 F.2d 384, 398 (7th Cir.1984), *aff'd*, 473 U.S. 606, 105 S.Ct. 3291, 87 L.Ed.2d 437 (1985).

[8] Avirgan and Honey emphasize that the district court was required to provide them with notice of its intention to consider the causation issue, and it did not do so. We reject this argument. Appellees' numerous summary judgment motions presented the causation issue. For example, Owen's summary judgment motion asserted that no evidence supported the theory that Galil was linked to the bombing or to the alleged enterprise. In this motion, Owen also challenged whether any evidence supported the kidnapping of Chinchilla, the kidnapping and threatening of David, the threats to murder Chinchilla, David, Avirgan, Honey), and the attempted assassination of Pastora.

In practically every motion for summary judgment, the appellees asserted that they had no involvement, directly or indirectly, in the La Penca bombing, that they were not the cause of any of the injuries, and that they were not and had never been members of an alleged enterprise. The appellees' affidavits, answers to interrogatories, and depositions put Avirgan and Honey on notice that causation was a principal issue. Consequently, the district court acted properly in granting summary judgment on the ground that Avirgan and Honey failed to prove that the appellees caused the injuries.

[9] Avirgan and Honey's additional allegation is that Galil

used C-4 explosives in the La Penca bombing. For this assertion, they rely upon the deposition of Fernando Cruz Castro. The district court found that Avirgan and Honey evidently asked Cruz Castro to recall a letter or some other writing which suggested that Per Anker Hansen (Galil) committed the La Penca bombing. Cruz Castro's affidavit seeks to recite the contents of the letter or other writing from memory. The district court found, and we agree, that Cruz Castro's affidavit was not admissible. No other evidence linked Galil or any appellee to C-4 explosives.

B. Discovery

Avirgan and Honey also contend that the district court erred in granting summary judgment because the appellees had not complied with discovery requests or the court's orders compelling discovery. The record does not support this contention. All appellees, except Corbo, submitted affidavits, answered interrogatories, and/or provided sworn depositions denying responsibility, directly or indirectly, for the La Penca bombing. Owen, Singlaub, and Calero gave lengthy and complete depositions; Hull and Secord gave incomplete depositions because of Avirgan and Honey's delay in setting dates; Posey, Quintero, and Hakim invoked their fifth amendment privilege; Shackley and Clines were never noticed for deposition. All appellees served with interrogatories responded, and all appellees who moved for summary judgment submitted sworn affidavits. Furthermore, Avirgan and Honey had the benefit of public information generated by the Iran/Contra affair, including the extensive testimony of Secord, Hakim, Owen, Singlaub, Calero, and numerous other witnesses in public hearings.

[10] In this RICO proceeding which involves some alleged criminal activity, Avirgan and Honey should have anticipated

that some appellees would impose their fifth amendment rights. Invocation of the amendment privilege did not give rise to any legally cognizable inferences sufficient to preclude entry of summary judgment. The negative inference, if any, to be drawn from the assertion of the fifth amendment does not substitute for evidence needed to meet the burden of production. *United States v. Rylander*, 460 U.S. 752, 103 S.Ct. 1548, 75 L.Ed.2d 521 (1983). Most importantly, Avirgan and Honey did not demonstrate that further discovery would have led to evidence which would have precluded summary judgment based on causation.[9]

II. Orders Prior to Summary Judgment

[11] Avirgan and Honey also contend that the district court erred in the issuance of orders prior to summary which restricted discovery and denied them the right to file a third amended complaint. We review these claims under an abuse of discretion standard. *Edward Leasing Corp. v. Uhlig and Associates, Inc.* 785 F.2d 877 (11th Cir.1986).

A. Discovery Limitations

Avirgan and Honey contend that the district court's order restricting discovery to evidence for the period 1983 through

---

[9] Avirgan and Honey had two years to conduct discovery and seven and one-half months advance warning of the discovery cut-off date. Knowing this, they took absolutely no discovery during the first nine months after filing the case and little more until January, 1988. During the final 4 1/2 months of discovery, Avirgan and Honey filed 153 deposition notices. It is clear that Avirgan and Honey's actions caused delay in discovery, not the appellees.

1986 of only one venture of the alleged RICO enterprise, and only those subjects related to the La Penca bombing, deprived them of an opportunity to conduct adequate discovery.

[12] Despite these assertions, prior to filing the first complaint, Avirgan and Honey boasted of a two-year investigative period, and after filing enjoyed an additional two years of discovery. Where a significant amount of discovery has been obtained, and it appears that further discovery would not be helpful in resolving the issues, a request for further discovery is properly denied. *Aviation Specialties, Inc. v. United Technologies Corp.*, 568 F.2d 1186, 1189 (5th Cir.1978).

[13] Thus, the time and subject matter restrictions imposed by the district court did not deprive Avirgan and Honey of an opportunity to conduct adequate discovery. Moreover, the order did not prohibit discovery into causation, which was the dispositive issue. The district court has wide discretion in determining the scope and effect of discovery, and it did not abuse its discretion when it imposed time and subject matter restrictions in this case. *See Amey, Inc. v. Gulf Abstract and Title, Inc.*, 758 F.2d 1486, 1505 (11th Cir.1985), *cert. denied*, 475 U.S. 1107, 106 S.Ct. 1513, 89 L.Ed.2d 912 (1986).

B. Third Amended Complaint

[14] Avirgan and Honey also challenge the district court's denial of their motion to file a third amended complaint. Avirgan and Honey acknowledge that the third amended complaint would not have altered the claims against the appellees or added new parties, causes of action, or additional relief. Consequently, a third amended complaint was unnecessary. Avirgan and Honey needed proof, not

more pleadings. The district court did not abuse its discretion in denying the filing of a third amended complaint.

III. Attorneys' Fees

In its order awarding costs and attorney's fees, the district court stated:

> The attorneys for the plaintiffs, The Christic Institute, must have known prior to suing that they had no competent evidence to substantiate the theories alleged in their complaint. Plaintiffs' lead counsel, Daniel Sheehan, supplemented the complaint with a detailed affidavit outlining the purported testimony of seventy-nine witnesses who Mr. Sheehan stated had factual knowledge that these defendants set and exploded the bomb that caused plaintiff's injuries.
>
> The seventy-nine witnesses were identified only by number. Plaintiffs' counsel refused to identify the names and addresses of the vast majority of the seventy-nine witnesses until ordered to do so by the court. Plaintiffs appealed the order requiring them to disclose the identities of the witnesses. These actions by plaintiffs and their counsel prevented the defendants from taking depositions of these witnesses, and delayed orderly discovery for many months.
>
> After all the appeals were exhausted and plaintiffs complied with the order to reveal the names of their witnesses, the reason for the plaintiffs' adamant refusal became apparent. Specifically, the names and identities of approximately twenty of the seventy-nine witnesses were totally unknown to Mr. Sheehan or the plaintiffs. Several of the disclosed witnesses later stated under oath

> that they did not know Mr. Sheehan, had never spoken to him, or flatly denied the statements he had attributed to them in his affidavit. The remaining witnesses did not furnish any statements that would be admissible. Much of the testimony of these witnesses involved conversations they allegedly had with other people, which is the hearsay testimony inadmissible at a trial.

Avirgan v. Hull, 705 F.Supp. 1544, 1545 (S.D.Fla.1989).

Avirgan and Honey do not dispute the district court's statements. The other appellants, in the fee portion of the case, do not dispute the statements.

The district court awarded costs to the appellees pursuant to Federal Rule of Civil Procedure 54(d), and 28 U.S.C. § 1920, which lists the items that may be reimbursed as costs.[10]

---

[10] Federal Rule of Civil Procedure 54(d) provides in pertinent part:

> Except when express provision therefor is made either in a statute of the United States or in these rules, costs shall be allowed as of course to the prevailing party unless the court otherwise directs.
>
> Title 28 U.S.C. § 1920 provides:
>
> Taxation of costs
>
> A judge or clerk of any court of the United States may tax as costs the following:
>
> (1) Fees of the clerk and marshal:
>
> (2) Fees of the court reporter for all or any part of the stenographic transcript necessarily obtained for use in the case:
>
> (3) Fees and disbursements for printing and witnesses:
>
> (4) Fees for exemplification and copies of papers necessarily obtained for use in the case:
>
> (5) Docket fees under section 1923 of this title:

Avirgan and Honey argue that what the attorneys "must have known" is not the proper standard for the grant of attorneys' fees, but is the standard for the imposition of sanctions. Thus, in their opinion, the district court impermissibly "guised its Rule 11 sanctions as a grant of summary judgment."

Sheehan could not have reasonably believed at the time of the filing of the complaint and the signing of the affidavit that the complaint was well-grounded in fact.[11] Particularly is this true of the affidavit with its unknown, nonexistent, deceased sources, its fabricated testimony, and the deceptive style used to mask its shortcomings. It is obvious that if the

---

(6) Compensation of court appointed experts, compensation of interpreters, and salaries, fees, expenses, and costs of special interpretation services under section 1828 of this title.

[11] Federal Rule of Civil Procedure 11. In pertinent part provides:

> The signature of an attorney or party constitutes a certificate by the signer that the signer has read the pleading, motion, or other paper; that to the best of the signer's knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.... If a pleading, motion, or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or other paper, including a reasonable attorney's fee.

appellants knew (must have known) prior to filing this lawsuit that they had no competent evidence, then, this complaint was not well-grounded. Additionally, the district court stated in its order granting attorney's fees and costs that Sheehan's affidavit was the impetus for the two years of discovery. Yet, this discovery did not yield any witnesses who could link the alleged criminal enterprise to the bombing.

[15,16] In its clarification order, the district court explained that Daniel Sheehan, as lead counsel, and the Christic Institute, as the official law firm, were liable pursuant to the bad-faith exception, 28 U.S.C. § 1927, and Federal Rule of Civil Procedure 11, while Avirgan and Honey, as willful participants in Sheehan's litigation strategy, were liable under the bad-faith exception.[12] 125 F.R.D. 189. A court may assess attorney's fees against litigants, counsel, and law firms who willfully abuse judicial process by conduct tantamount to bad faith. *Roadway Express Inc. v. Piper*, 447 U.S. 752, 100 S.Ct. 2455, 65 L.Ed.2d 488 (1980). On this record, we have no difficulty in finding that these appellants unreasonably and vexatiously multiplied these proceedings.[13]

---

[12] Title 28 U.S.C. § 1927 provides:

> Any attorney or other person admitted to conduct cases in any court of the United States or any Territory thereof who so multiplies the proceedings in any case unreasonably and vexatiously may be required by the court to satisfy personally the excess costs, expenses, and attorneys' fees reasonably incurred because of such conduct.

[13] At oral argument, appellants admitted they had spent more than $2 million on this case although, under the best scenario, they did not expect to collect half that amount.

It is well established that:

> Although a litigant proceeding in good faith has a right to use civil discovery in attempts to prove the existence of a colorable claim for relief, filing a lawsuit is not a gratuitous license to conduct infinite forays in search of evidence. When it becomes apparent that discoverable evidence will not bear out the claim, the litigant and his attorney have a duty to discontinue their quest.

Collins v. Walden, 834 F.2d 961, 965 (11th Cir.1987). Since Sheehan, the Christic Institute, Avirgan, and Honey chose not to abandon this case, the district court properly awarded attorney's fees and costs to the appellees.

[17] Furthermore, the district court's order does not infringe upon the appellants' right of access to the courts, or first amendment rights of free association, or Sheehan's professional obligation to represent clients zealously. Status as a public interest law firm or the nature of a claim does not confer immunity from attorneys' fees for bringing and maintaining frivolous lawsuits. *See Roadway Express*, 477 U.S. at 762, 100 S.Ct. at 2462; *Oliveri v. Thompson*, 803 F.2d 1265, 1280 (2d Cir. 1986). Accordingly, we affirm the district court's award of attorney's fees and costs.

CONCLUSION

Accordingly, we affirm the judgment of the district court.

AFFIRMED.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 86-1146-CIV-KING

Entered June 23, 1988
Reported as Avirgan v. Hull,
691 F.Supp 1357 (S.D.Fla. 1989)

Tony AVIRGAN, and Martha Honey,
Plaintiffs,

vs.

John HULL, Bruce Jones, Rene Corbo, Felipe Vidal, Moises Dagoberto Nunez, Francisco Chanes, Ramon Cecilio Palacio, Ricardo Gris, William Gris Roger Lee Pallais, Amac Galil, Hector Cornillot, Jorge Gonzalez, Adolfo Calero, Alvaro Cruz, Frederico Saenz, Robert W. Owen, John K. Singlaub, Ronald Joseph Martin, Sr., James McCoy, Thomas Posey, Rafael "Chi Chi" Quintero, Mario Delamico, Thomas Clines Theodore Shackley, Albert Hakim, Richard Secord, Pablo Escobar, and Jorge Ochoa,

Defendants.

OPINION GRANTING SUMMARY JUDGEMENTS

The thundering explosion of a bomb shattered the evening air at the river bank camp of the Southern Contra Force led by Commandante Eden Pastora. A group of

approximately 30 journalists had travelled for hours by canoe, up a steaming jungle river to reach the guerilla camp known as La Penca.

Plaintiffs, one of whom is a journalist who survived the explosion that left eight dead and numerous wounded, accuse the 29 defendants of causing this bombing. They alleged that this bombing was only one act of criminal RICO enterprise consisting of all of the defendants whose purpose was to overthrow the Government of Nicaragua. Plaintiffs seek damages for their personal injuries resulting from the bombing and for interference with their subsequent investigation of the bombing tragedy.

The Plaintiffs are reporters who, while working for various news agencies, cover Central America. As part of this assignment, the Plaintiff Tony Avirgan covered the La Penca press conference held by the Contra leader Eden Pastora.

All defendants deny plaintiffs' allegation of the existence of a RICO conspiracy or any involvement with the bombing and assassination attempt. Thirteen defendants[1] have moved for summary judgment on the basis

[1] The following defendants have either in fact, or through stipulation of counsel, timely filed motions for summary judgement: Jones, Owen, Hull, Calero, Singlaub, Shackley, Martin, McCoy, QUintero, Delamico, Clines, Hakim, and Secord. The defendant Gonzalez filed an untimely summary judgement motion to which the plaintiffs objected.

Six defendants were never served and were dismissed. These are Vidal, Palacio, Galil, Cruz, Escobar, and Ochoa.

Nine defendants have not moved for summary judgement. They

that plaintiffs, after all discovery has been concluded, have failed to establish that the alleged assassination attempt was connected in any way with these defendants or that they caused any loss or injury to the plaintiffs. These Defendants include alleged Central Intelligence Agency operatives, military intelligence personnel, mercenaries, arm merchants and Colombian drug lords. The principal allegations of the complaint focus on Nicaragua, but it also touches upon some alleged anti-Communist operations in Cuba, Southeast Asia, Iran and Libya.

I. The Conspiracy Allegation of the Complaint and the Order Setting Guidelines for Discovery

The plaintiffs specified May 1983 as the commencement of the alleged conspiracy and its continuance through the filing of the original complaint on May 29, 1986. Each and every allegation pertaining to the La Penca bombing and those matters surrounding the alleged involvement of the defendants in the events then taking place in Nicaragua (set forth in paragraphs 38 to 74 of the amended complaint of October 3, 1986) are alleged to have occurred between May 1983 and May 29, 1986. See Amended Complaint pp. 13-25.

The court, after hearing in oral argument the respective positions of the parties, established limitations and guidelines for discovery on July 30, 1987. The limitation was both to time and subject matter. The time limit was the time specified by plaintiffs in their amended complaint as being the time frame of the alleged conspiracy plus six months

---

are Corbo, Nunez, Chanez, R. Gris, W. Gris, Pallais, Cornillot, Saenz, and Posey. Nunez has moved, after the pre-trial conference, to vacate the entry of default judgement against him and quash the service of process made to him.

before the first alleged overt act of May 1983. The parties were limited in their discovery to a four year period covering the relevant alleged conspiratorial time period of December 1982 until November 1986. The subject matter limitation revolved around discovery arising out of the alleged events in Central America, the purchase or sale of military equipment, weapons or explosives, transactions in illegal drugs, the operation of the alleged Neutrality Act enterprise and any action resulting in or causing any injury to the plaintiffs, specifically including the La Penca bombing. Full and complete discovery for the time and subject matter alleged by the plaintiffs has been permitted.

The plaintiff's contend that they should have been permitted to conduct worldwide discovery concerning the activities of the defendants prior to December 1982 in Cuba, Southeast Asia, Iran, and Libya. Some of these events occurred as far back as 1959.

Plaintiff's are bound by the allegations of their complaint wherein they designated the date of commencement of the enterprise as May 1983. If the plaintiffs cannot demonstrate by admissible and competent proof that these defendants injured them as alleged in the complaint, then they have no case cognizable under the RICO Statute and no right to discovery pre 1982. Absent such a showing, it is completely immaterial to any issue in this law suit whether the defendants were, or were not, involved in some other enterprise at some other time in Cuba, Southeast Asia, Iran or Libya. To have permitted them to inquire into every facet of the lives of the defendants for the past thirty years, without first requiring plaintiffs to show that defendants injured the plaintiff at the La Penca bombing would be wrong.

The defendant Shackley has twice sought summary

judgment upon the basis that no evidence had been developed during the discovery phase of this litigation to sustain any of the allegations brought by the plaintiffs against him. In each instance the plaintiffs defended on the basis that additional time for discovery was required and that Mr. Shackley's motions were premature since the parties had until the pretrial conference date within which to complete all discovery. The court denied these motions, agreeing with plaintiffs that they should have up until the cutoff of all discovery (the pretrial conference date) within which to adduce all relevant facts.

The plaintiffs have been given the broadest possible time for discovery of the facts relevant to the issues relating to the La Penca bombing, the events of Nicaragua and the overt acts alleged in the amended complaint. The plaintiffs have had two years to develop facts to support the allegations of their

complaint, during which over 20 depositions have been taken, dozens of sets of interrogatories propounded and numerous affidavits filed.

II. The Causes of Action

The complaint sets forth eight causes of action. The gravamen of these counts is one claim under the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. §§ 1961-1968 (1986). The complaint also sets forth seven state claims, six arising under Florida common law and one under the Florida RICO statute.

A. The RICO Claim

The core of the Plaintiffs complaint rests upon 18 U.S.C. § 1964(c), which has been termed civil RICO. This section

provides

> (c) Any person injured in his business or property by reason of a violation of Section 1962 of this chapter may sue therefore in any appropriate United States District Court and shall recover threefold damages he sustains and the cost of the suit including a reasonable attorneys fee.

From this language, the Plaintiff must prove three essential elements. See Wilcox Development Company v. First Interstate Bank of Oregon, 97 F.R.D. 440-447 (D.Or. 1983). The first element is a violation of 18 U.S.C. § 1962. The second requirement is causation; that is, a direct injury of the plaintiffs from such violation. The third requirement is damages sustained by the Plaintiffs. Id. at 446.

Title 18, U.S.C. § 1962 establishes four violations. A Defendant violates § 1962(a) if that person receives any income derived directly or indirectly from a pattern of racketeering activity and uses or invests directly or indirectly any part of this income or the proceeds of this income to acquire any interest in or establish or operate an enterprise that is engaged in or the activities of which effect interstate or foreign commerce. A defendant violates § 1962(b) by acquiring or maintaining through a pattern of racketeering activity any interest in or control of any enterprise which is engaged in or the activities of which affect interstate or foreign commerce. A defendant violates § 1962(c) if that defendant is employed by or associated with any enterprise engaged in or the activities of which effect interstate or foreign commerce and that defendant conducts or participates directly or indirectly in the conduct of such enterprise's affairs through a pattern of racketeering activity. A defendant violates § 1962(d) if he conspires to violate any of the provisions of subsection (a), (b) or (c).

The three essential terms of § 1962, an enterprise, a pattern, and racketeering activity, are defined in § 1961. An enterprise "includes any individual, partnership, corporation, association or other legal entity and any union or group of individuals associated in fact although not a legal entity." 18 U.S.C. § 1961(1)(4). Any pattern of racketeering activity "requires at least two acts of racketeering activity, one of which occurred after the effective date of this chapter and the last of which occurred within ten years, excluding any period of imprisonment after the commission of a prior act of racketeering activity". 18 U.S.C. § 1961(1)(5). Racketeering activity is defined by reference to numerous federal and state felonies as delineated by statute or common law. 18 U.S.C. § 1961(1)(a)-(d).

In its generic form the causation requirement is relatively straight forward. Section 1964(c) only requires that the plaintiff be injured by reason of a violation of § 1962. Clearly, the statute imposes a proximate cause requirement on the plaintiffs. See Horaco v. American Bank & Trust Co. of Chicago, 747 F.2d 384, 398 (7th Cir. 1984), aff'd, 105 S. Ct. 3291 (1985). This simply requires that the criminal conduct in violation of § 1962 must directly or indirectly have injured the plaintiffs' business or property. Id.

With respect to the manner in which a violation of a particular subsection of § 1962 causes the Plaintiff's injury, the analysis becomes complicated. As with all causation issues, the central focus must be placed upon how tenuous the causation link can or should be. This question varies from one subsection of § 1962 to another.

Two views exist with respect to causation under § 1962(a). The first view requires that the defendants' injury be caused by the use or investment of the income derived through the pattern of racketeering activity. See Eastern

Federal Credit Union v. Pete Markick Mitchell & Co., 639 F.Supp. 1532 (D. Mass. 1986); Heritage Insurance Co. v. First National Bank of Cicero, 629 F.Supp. 1412 (N. Ill. 1986). The second view is broader. Under this analysis a plaintiff's injury may be caused by the operation of the enterprise in which the defendant invested the proceeds derived from the pattern of racketeering activity. See Blue Cross of Western Pennsylvania v. Nardone, 680 F.Supp. 195 (W. D. Penn. 1988).

The analysis of Judge Spencer in Nardone is correct. The language of § 1962(a) prohibits the use or investment of the income or proceeds derived from a pattern of racketeering "in the acquisition of any interest in or the establishment or operation of any enterprise...". This language indicates the intent of Congress to reach all situations where someone may benefit from conducting a pattern of racketeering activity. Accordingly, a defendant's conduct can injury a RICO plaintiff if that plaintiff is injured by the use or investment of income or proceeds derived from the pattern or, if that plaintiff is injured by the operation of the enterprise in which the defendant used or invested the income or proceeds. This construction is consistent with the dictate of Congress to liberally construe the RICO statute. See Sedima, S.P.R.L. v. Imrex Co., Inc., 105 S.Ct 3275, (1985).

The causation link of § 1962(b) is direct. The plaintiff must be injured by the defendant's pattern of racketeering activity, that was used to either acquire or maintain any interest in or control of, any enterprise. Accordingly, the plaintiff must be injured by the pattern of racketeering activity committed by the defendant.

The causation requirement for § 1962(c) is more complicated. Initially, the plaintiff needs to be injured by

the pattern of racketeering activity. The determination of which defendant actually caused the plaintiff's injury is more difficult.

Mere association with a RICO enterprise is not enough to establish liability. See Nassau Suffolk Ice Cream v. Integrated Resources, 114 F.R.D 684, (S.D.N.Y. 1987). The statute requires that the defendant's participation be in the conduct of the affairs of a RICO enterprise. Id. at 691. The Second Circuit has found that a party conducts a racketeering activity when the party is either able to commit the predicate offenses solely by virtue of his position in the enterprise, or involvement or control over the affairs of the enterprise, or the predicate offenses are related to the activities of that enterprise. See United States v. Scotto, 641 F.2d 47, 54 (2d. Cir 1980), cert. denied, 452 U.S. 961 (1981).

The causation link, therefore, requires a showing that the plaintiff was injured as a result of the conduct of the enterprise by the defendant. At the very least this requirement mandates a showing that the defendant was a member of the enterprise, and that the enterprise conducted the racketeering activity that injured the plaintiff.

All injuries are not necessarily remedied by RICO. In this Circuit a plaintiff must make a showing that it has suffered injury to its property or business. See Grogan v Platt, 835 F2d 844 (11th Cir. 1988).

As this court found in its January 30, 1987 order denying motions to dismiss the second amended complaint, plaintiffs had sufficiently alleged a cause of action under RICO. Because at the summary judgment stage a plaintiff must make a showing that there is a genuine issue of material fact with respect to the allegations made in the complaint, the court now reviews the allegations made. In so doing the court will start with the injury requirement and then proceed

to the violations of § 1962.

Tony Avirgan is alleged to have suffered personal injury, damage to his television camera equipment, and loss of business by reason of the bombing and the defendants pattern of racketeering activity committed thereafter.

The plaintiff alleges that these injuries were the result of the acts of all these defendants. The plaintiff alleges that Per Anker Hansen a/k/a Amac Galil, actually placed and exploded the bomb at the La Penca conference while hired by an enterprise consisting of all the defendants. This enterprise, it is alleged, also threatened to kidnap and murder "David" and Carlos Rojas Chinchilla. These individuals had been giving information about the bombing to plaintiffs. See Second Amended Complaint, paragraphs 53 and 54. The plaintiffs further allege that the defendants, members of the enterprise, have threatened to murder both of them. Second Amended Complaint, paragraph 55. While asserting liability against all, those defendants alleged to be specifically responsible for the threats and other acts occurring after the La Penca bombing are Hull, Vidal, Chanes, Nunez, Cruz, Saenz, Posey and Owen.

Plaintiffs maintain that the defendants have violated various subsections of 18 U.S.C § 1962. It is the theory of plaintiff's case that the defendants established an enterprise, the purpose of which was to violate the principles espoused in the Neutrality Act and that all of the alleged patterns of racketeering activity were performed to promote the goal of this enterprise. Central to the alleged violations of each subsection of § 1962 is the plaintiffs' purported Neutrality Act enterprise. The plaintiffs allege that in May, 1983 the defendants Francisco Chanes, Moises Nunez, Hector Cornillot, Rene Corbo and Felipe Vidal Santiago established an enterprise. The purpose of the enterprise was to launch

a Cuban/American mercenary expeditionary force against the Republic of Nicaragua, from Costa Rica, along the "Southern Front."

The plaintiffs also contend that these defendants established a cocaine smuggling operation through Costa Rica to finance the workings of this enterprise in violation of the Neutrality Act. 18 U.S.C. § 960 (1986). It is asserted that the original purpose of these individuals was to assist an indigenous Nicaraguan group, the Revolutionary Democratic Alliance ("ARDE").

The ARDE was engaged in guerilla attacks against Nicaragua under the leadership of Eden Pastora. The plaintiffs maintain that sometime after this original joinder of forces the enterprise decided to remove Pastora as leader of ARDE in order to merge ARDE into alliance with the Honduras based contra group, the Nicaraguan Democratic Force ("FDN") and facilitate its narcotics trafficking in Costa Rica.

According to the complaint, the defendants Vidal and Corbo travelled to Costa Rica in May of 1983 to meet with defendants John Hull and Bruce Jones at Hull's ranch.

It was on this occasion that Hull and Jones, who allegedly had participated in anti-Nicaraguan military activities with the ARDE, joined the Neutrality Act enterprise and participated in the alleged decision to overthrow Pastora's leadership of the ARDE.

Plaintiffs further contend that in August of 1983 defendants Vidal, Nunez and Corbo, Cornillot, Chanes, Hull and Jones recruited the noted Medellin cocaine cartel members Pablo Escobar and Jorge Ochoa.

Avirgan and Honey assert that Ochoa and Escobar joined the enterprise and agreed to provide hundreds of pounds of Columbian cocaine in order to finance the activities of the enterprise in Costa Rica and Nicaragua.

Between December 1983 and February 1984 the defendants Jorge Gonzalez, Ramon Cecilio Palacio, Ricardo Gris, William Gris Adolfo Calero allegedly joined the Neutrality Act enterprise for the purpose of accomplishing the murder of Eden Pastora.

The plaintiffs allege that the enterprise sent the defendants Ricardo Gris and William Gris to Chile where they met and hired the defendant Amac Galil to murder Eden Pastora. The plaintiffs contend that the purpose of this action was to take over the leadership of ARDE.

Between March 1984 and May 1984 the plaintiffs contend that several other significant and important figures in the Iran Contra affair joined this enterprise. James McCoy, Mario Delamico and Ronald Joseph Martin, Sr. are alleged to have joined the enterprise. Avirgan and Honey believe these three defendants unlawfully purchased, through both the defendant McCoy's business (R&M Equipment, Inc.) and defendant Martin's business (Tamiami Gun Shop), arms, C-4 explosives, ammunition and military equipment. The plaintiffs maintain .that these weapons were intended to be used by the enterprise for terrorist activities, murder and arson. Also during this time, the plaintiffs contend that the defendants Theodore Shackley, Thomas Clines, Richard Secord, Albert Hakim and Rafael "Chi Chi" Quintero joined the enterprise and purchased and transported arms and explosives through their businesses the Orca Supply Company and CSF Investments Ltd. John K. Singlaub and Robert Owen allegedly joined the enterprise and operated through four organizations: Gray & Co., IDEA, Inc., the United

States Council on World Freedom, and the World Anti-Communist League. The plaintiffs believed these organizations provided money for explosives and arms to be used in Nicaragua.

Sometime around the beginning of May 1984, the enterprise focused in on its planned assassination of Eden Pastora. The plaintiffs contend that the defendants Roger Lee Pallais, Frederico Saenz and Alvaro Cruz planned the attack on the Pastora press conference intending that members of the press be injured and the government of Nicaragua blamed, so as to achieve the dual purpose of attracting greater negative publicity against the government of Nicaragua and eliminating Pastora.

On May 30, 1984 the plaintiffs allege the defendant Galil (a/k/a Hansen) acting as an agent of the enterprise, placed and detonated a bomb at the press conference held by Eden Pastora at La Penca, Nicaragua. Tony Avirgan was injured and his camera equipment destroyed when this bomb exploded. Pastora survived the blast but six of his soldiers and three civilian journalists did not. A number of people, including Pastora, were seriously injured.

The next activity occurred in December of 1984, when plaintiffs allege Thomas Posey of the Civilian Material Assistance ("CMA") joined the enterprise and met with Vidal, Corbo, Hull and Owen in Houston and Miami to form a second conspiracy to murder Eden Pastora.

Avirgan and Honey further allege that between December 1984 and July 1985 the defendants Corbo, Vidal, Hull, Jones, Posey, Palacio, Pallais, Cruz and Saenz conspired to murder the United States Ambassador to Costa Rica, Lewis Tambs. C-4 explosives were to be placed in an electrical box at the U.S. Embassy in San Jose, Costa Rica

with the operation financed by monies received from the defendant Escobar's drug operations.

Between May and July 1985 the enterprise allegedly kidnapped and murdered plaintiffs' informant news source, "David". This man was an employee of the enterprise who gave plaintiff Avirgan information concerning the purpose and methods of the enterprise. A second news source of the plaintiffs Carlos Rojas Chinchilla, who helped the plaintiffs communicate with David, was allegedly kidnapped and threatened.

Finally, the plaintiffs allege that the activities of the enterprise continue to this present day with threats directed against them personally and with the continued smuggling of cocaine into the United States from Costa Rica.

Central to the alleged violations of § 1962 are the contended acts of racketeering. The plaintiffs allege that 37 types of racketeering activity were carried out by these defendants. Because the type of racketeering activity carried out by each defendant varies greatly, the court will discuss these allegations in detail.

The first alleged act of racketeering activity was the attempted murder of Eden Pastora. The plaintiffs contend that pursuant to this crime of violence the defendants Hull, Calero, Singlaub, Shackley, Martin, McCoy, Quintero, Delamico, Clines, Hakim and Secord engaged in foreign travel and communications in violation of 18 U.S.C. § 1952(a)(2).

The second act of racketeering activity was the murder of the eight persons at the press conference where the attempted assassination of Eden Pastora occurred. Plaintiffs contend that Hull, Calero, Singlaub, Shackley, Martin, McCoy, Quintero, Delamico, Clines, Hakim and Secord

engaged in foreign travel and communications in violation of 18 U.S.C. § 1952(a)(2) pursuant to this end.

The third act of racketeering activity allegedly involves the same La Penca bombing and the attempted murder of the plaintiff Avirgan. Pursuant to this crime the same defendants engaged in foreign travel and communication in violation of the same provisions.

The following acts of racketeering activity are alleged to have been committed only by the defendants Hull and Owen:

the kidnap of Carlos Rojas Chinchilla in violation of 18 U.S.C. § 1951(a);
the kidnap and threatened violence against David in violation of 18 U.S.C. § 1951(a);
the threatened murder of Carlos Rojas Chinchilla in violation of 18 U.S.C. § 1951(a);
the threats to murder David in violation of 18 U.S.C. § 1951(a);
the murder of David in violation of 18 U.S.C. § 1951(a);
the threats to murder plaintiff Avirgan in violation of 18 U.S.C. § 1503 and 1951(a);
the threats to murder plaintiffs Honey and both plaintiffs' children and office employees in violation of 18 U.S.C. § 1503 and § 1951(a);
the participation in narcotics trafficking in violation of 18 U.S.C. § 1952(a) and the transfer of proceeds from narcotics trafficking in violation of 31 U.S.C. § 5311 to 5312.

The plaintiffs next allege that the defendants Owen, Hull, Calero, Singlaub, Shackley, Martin, McCoy, Quintero, Delamico, Clines, Hakim, and Secord trafficked in arms and explosives in violation of state and federal law including 18

U.S.C. §§ 842(a)(3) and 922(b)(5).

The plaintiffs next contend that defendants Martin, Secord, Shackley, Clines, Hakim and McCoy, transferred funds derived from illegal dealing in weapons and explosives in violation of 31 U.S.C. §§ 5311 to 5322.

The plaintiffs next contend that the defendants Owen, Hull, Calero, conspired on two occasions to murder Eden Pastora.

Plaintiffs then contend that defendants Hull and Owen conspired to kidnap both Carlos Rojas Chinchilla and David, and to murder David. These two defendants are also alleged to have conspired to transport cocaine and other illegal drugs into the United States.

The plaintiffs then contend the defendants Martin, Quintero, Delamico, Clines, Shackley, Secord, Hakim and McCoy conspired to facilitate the transport of cocaine into the United States by accepting the proceeds from illegal sales of narcotics in payment for illegal arms shipments.

The plaintiffs next contended the defendant Hull conspired to murder the United States ambassador to Costa Rica by exploding a bomb at the United States Embassy in Costa Rica.

Plaintiffs conclude the description of the types of racketeering activity by alleging joint participation in several criminal adventures that they contend shows an enduring pattern of joint racketeering activity through a continuity of relationship between the defendants. A description of these criminal ventures follows.

The first criminal venture is alleged to have occurred

between June 1961 and July 1962. The defendants Shackley, Clines and Quintero are alleged to have been associated together in setting up a terrorist expeditiary force to launch illegal actions against Cuba. The plaintiffs contend that in July 1962 organized crime figures Santo Trafficante, Sam Giancana and John Rosselli joined this group to perform political assassinations in Cuba.

The second criminal venture is alleged to have begun in 1962 and ended in 1975. Shackley is alleged to have been involved in political assassinations and the heroin trade in Laos with Clines working as an associate of Shackley in these operations. In 1966 Singlaub and Secord allegedly joined with Shackley and Clines to establish a political assassination operation based in Laos, Thailand and Cambodia.

The third criminal venture is alleged to have been carried out by Shackley, Singlaub, Clines and Secord in 1966 and 1967. Plaintiffs allege that these defendants set up the Asian Anti-Communist League which cooperated with other groups to establish a political assassination enterprise to operate in South Korea and Taiwan. Plaintiffs allege that this organization became the World Anti-Communist League and is alleged to have engaged in assassinations, illegal export of arms and explosives and other criminal activities throughout the world.

The fourth criminal venture is alleged to have occurred in 1972. The defendants Shackley and Clines are alleged to have participated in the planning of arms shipments and assassinations in Chile.

The fifth criminal venture is alleged to have occurred in 1973. Plaintiffs allege defendant Shackley worked with Clines and Secord to set up the Nugan-Hand Bank in Australia. This bank is alleged to have been the conduit for

funds from the Southeast Asian heroin trafficking to terrorist activities including assassinations, gun running, and trafficking in explosives.

The sixth criminal venture is alleged to have occurred between 1976 and 1978. Defendants Shackley, Clines, and Quintero are alleged to have worked with others to establish an operation for illegally providing arms and explosives for political assassinations in Iran and Libya.

The seventh venture is alleged to have occurred in 1978 where defendants Secord, Shackley and Clines are alleged to have embezzled money from the United States Department of Defense Foreign Military Sales Program in order to finance terrorist operations and to illegally purchase equipment and aircraft for the Contras.

The eighth criminal venture is alleged to have involved defendants Shackley, Clines, Secord and Hakim in a partnership with one Edwin Wilson. The purpose of this partnership was to form EATSCO which plaintiffs contend was engaged in both legal and illegal business activities. With the help of the defendant Martin, the illegal activities included financing terrorist organizations.

With these theories established the plaintiffs then sent out their purported violations of § 1962. The plaintiffs allege causes of action under each subsection of § 1962. Each purported violation of § 1962 includes the racketeering activity and the enterprise discussed above.

The plaintiffs first allege that § 1962(a) was violated because the defendants used invested income received from the pattern of racketeering activity described above to establish, acquire an interest in, or operate their collective enterprise to violate the Neutrality Act.

Defendants also allege that the defendant Owen established an enterprise, with income received from the pattern of racketeering described above to establish an Idea, Inc., which was engaged in activities that affect interstate and foreign commerce.

The plaintiffs also allege that the defendants Quintero, Shackley, Secord, Clines and Hakim have used invested income received from the pattern of racketeering activity described above to establish and operate Orca Supply Co. which is engaged in interstate commerce.

The plaintiffs allege that the defendants Delamico and Martin have used invested income received from the pattern of racketeering activity described above to establish and acquire an interest in and operate the Tamiami Gun Shop and a Honduras firm associated with the Tamiami Gun Shop, both of which are engaged in interstate commerce.

This same allegation is made against the defendant McCoy by using income received from the pattern of racketeering activity to establish and operate R & M Equipment.

Plaintiffs make a similar statement against the defendant Hull. They allege that he has used income received from the pattern of racketeering activity to establish and acquire an interest in and operate his citrus farm enterprise.

Plaintiffs use many of these allegations to support their contentions for a finding of violation of § 1962(b). Plaintiffs first contend that the defendant Hull through his racketeering activity alleged above has acquired and maintained an interest in and control of the ALIANZA REVOLUCIONARIA DEMOCRATICIA ("ARDE").

Plaintiffs also contend the defendants used their pattern of racketeering activity described above to gain control of or operate both Neutrality Act enterprises and the enterprises alleged in the purported violations of § 1962(a).

For the violations of § 1962(c) the plaintiffs allege that each of the defendants was employed or associated with the Neutrality Act Enterprise and has participated in the conduct of the affairs of this enterprise through racketeering acts described above. In addition plaintiffs contend the defendants employed or associated with the other business and enterprise discussed in the purported violations of § 1962(a) and they conducted affairs of these enterprises through a pattern of racketeering activity.

Similar broad allegations are made with respect to violations of § 1962(d). The plaintiffs contend that the defendants have conspired together to violate the subsections in § 1962 and have taken overt acts further into this conspiracy.

B. The State Law Claims

Plaintiffs bring seven state law claims. Six arise under Florida common law, and the seventh is one under the Florida RICO Statute, § 895.03. Because the allegations under each of these counts differ, the court now reviews them in detail.

The first count is for battery. The plaintiffs contend that on May 30, 1984, all the defendants acting pursuant to a conspiracy intentionally inflicted serious physical injury upon the plaintiff Avirgan by causing the defendant Galil to place and detonate a C-4 explosive device at the La Penca press conference. Plaintiff further alleges that this intentional battery caused physical injuries in the form of torn flesh,

burns and a mangled left hand to the plaintiff Avirgan. As a result of these injuries the plaintiff contends he incurred hospital costs, medical bills and loss of income due to his inability to work. The plaintiff Avirgan also contends he experienced extreme physical pain and suffering.

The second count is one for loss of consortium on behalf of plaintiff Honey. She alleges that due to the physical injuries inflicted upon Avirgan she suffered loss of consortium including the companionship, fellowship, company and aid of her husband. She also alleges a loss of her income during the period of her husband's recovery.

Plaintiffs also allege a cause of action for assault. Plaintiffs contend the defendants acted pursuant to conspiracy and through agents, and willfully communicated threats of serious physical injury to the plaintiffs. Plaintiffs also allege the defendants had the present ability to effectuate these threats. Plaintiffs contend they were put in fear of their lives, and for the lives of their children, and were forced to move their children from Costa Rica and hire private body guards.

Count four is one for intentional infliction of mental distress and relates to the aforementioned threats in the assault count. The plaintiffs contend that the purpose of these threats was to inflict intentional emotional distress.

The fifth count is one for trespass and damage to personal property. Plaintiffs contend that the bombing at La Penca destroyed the plaintiffs' television recording equipment.

The plaintiffs also allege a state RICO claim under Fla. Stat. Ann. § 895.03. Plaintiffs adopt all their allegations of their federal RICO claim for this claim. They also demand

the same relief.

III. The Law of Summary Judgment

A. The standard to be applied

As Judge Alvin B. Rubin so succinctly stated in Fontenot v. Upjohn Co., 780 F.2d 1190 (5th Cir. 1986):

> The principal function of the motion for summary judgment is to show that, in the absence of factual disputes, one or more of the essential elements of a claim or defense before the court is not in doubt and that, as a result, judgment should be entered on the basis of purely legal considerations. Summary judgment must, therefore, be rendered when the material offered in support of and in opposition to the motion "show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law" [footnote, citing authorities, omitted].

B. Moving party who does not have the burden of proof.

If the party seeking summary judgment meets the initial burden of demonstrating the absence of a genuine issue of material fact, Celotex Corp. v. Catrett, ____ U.S. ____, 106 S.Ct. 2548 (1986), the burden then shifts to the non-moving party to come forward with sufficient evidence to rebut this showing with his own affidavit or other relevant and admissible evidence. Fed. R. Civ. P. 56(e); Sweet v. Childs, 507 F.2d 675, (5th. Cir. 1975), Munoz v. Intern. Alliance of Thea. Stage Emp., 563 F.2d 205 (5th Cir. 1977). In Fontenot Judge Rubin states it thusly:

In the usual case, the party who seeks a summary judgment must show by affidavit or other evidentiary materials that there is no genuine dispute as to any fact material to resolution of the motion. He must establish thereby the existence or nonexistence of enough of the essential elements of a claim and its related defenses to permit disposition of the claim as a matter of law. Thus, if the movant bears the burden of proof of an issue, either because he is the plaintiff or as a defendant he is asserting an affirmative defense, he must establish beyond peradventure all of the essential elements of the claim or defense to warrant judgment in his favor.

If the movant, however, does not bear the burden of proof, he should be able to obtain summary judgment simply by disproving the existence of any essential element of the opposing party's claim or affirmative defense. "Of course," as Professor Martin B. Louis points out in his article, Federal Summary Judgment Doctrine: A Critical Analysis, "when the movant is a plaintiff he must ordinarily do more than defeat the opposing party's affirmative defenses in order to obtain a final [rather than partial] judgment." Since, in addition to asserting an affirmative defense, the defendant will likely have denied the plaintiff's allegations, the plaintiff must also establish all of the essential elements of his claim.

The crucial question for the court is whether there is a "genuine issue" of fact concerning any essential element of the claim on which judgment is being sought. If the moving party can show that there is no evidence whatever to establish one or more essential elements of a claim on which the opposing party has the burden of proof, trial would be a bootless exercise, fated for an inevitable result but at continued expense for the parties,

the preemption of a trial date that might have been used for other litigants waiting impatiently in the judicial queue, and a burden on the court and the taxpayers.

Fontenot, 780 F.2d at 1194.

C. Burden on Non-moving Party Having Burden of Proof.

As Judge Ruben observes in his excellent analysis of the current law of guiding principles to be followed when determining summary judgment issues:

> Few of the cases or commentators have squarely faced the problem raised by this case. When a defendant moves for summary judgment of the ground that the plaintiff has failed to establish a prima facie case, must he adduce positive evidence to disprove the existence of an essential element of the plaintiff's case, or may he simply show that the plaintiff has failed to bring out any evidence whatever in support of that element of his claim? The treatises written by Professor Morore and by Wright and Miller at least imply that because of its structure and phrasing, Rule 56 requires the movant to establish in some fashion the absence of any issue of material fact, even though the other party would be required not only to adduce evidence on, but to prove the existence of, the critical facts at the trial.
>
> Rule 56 does not, however, preclude the coordination of summary judgment proof requirements with the allocation of the burden of proof at trial. If a party who does not have the burden of proof at trial has access to evidentiary materials that disprove the facts necessary to establish the opposing party's position, he should adduce them in one of the fashions mentioned by Rule 56:

affidavit, deposition, or testimony, when permitted by Rule 43(e). If, however, it is evident that the party seeking summary judgment against one who bears the proof burden has no access to evidence of disproof, and ample time has been allowed for discovery, he should be permitted as Upjohn did here, to rely upon the complete absence of proof of an essential element of the other party's case. [Footnote, citing authority, omitted].

D. A Non-moving Party, Opposing a Motion for Summary Judgment Supported by Affidavits Cannot Meet His Burden of Coming Forth with Relevant, Competent Evidence by Relying on Legal Conclusions or Evidence Inadmissable at Trial.

Fontenot 780 F.2d at 1195.

In the case at bar the court must determine whether the moving defendants have produced, by competent admissable evidence, sufficient facts to shift the burden to plaintiffs. If the court reaches this conclusion, it must then consider the plaintiffs' rebuttal proof.

The evidence presented to refute the movants' summary judgment must be supported by admissable evidence showing a genuine issue of material fact. Fed.R.Civ.P. 56 (e). The evidence produced by plaintiffs cannot consist of conclusory allegations or legal conclusions. First National Bank of Arizona v. Cities Serv. Co., 391 U.S. 253, 289, 88 S.Ct. 1575, 1529-93, 20 L. Ed.2d 569, 591-93 (1968); Galindo v. Precision Am. Corp., 754 F.2d 1212, 1216 (5th Cir. 1985); Fontenot v. Upjohn Co. supra.

Clearly, only that evidence admissible at trial may be considered in passing on the propriety of the granting or denying of summary judgment. Fed.R.Civ.P. 56(e); see also

Fed.R.Civ.P. 56(e), advisory committee note Munoz v. Intern. Alliance of Thea. State Emp., 563 F.2d 205 at 213; Hollingsworth Solderless Terminal Co. v. Turley, 622 F.2d 1324, 1335 n.9 (9th Cir. 1980); Bruce Construction Corp. v. United States, 242 F.2d. 873 (5th Cir. 1957); Sires v. Luke, 544 F.Supp. 1155, 1160 (S. D. Ga. 1982).

E. Requirement for Filing of Depositions and Discovery Materials with Court

S.D. Fla. R. 10 I 1 mandates retention of discovery material by the party taking the deposition or causing the interrogatories or produced items to be taken or obtained. These depositions, interrogatories, requests for documents or admissions, or answers or responses thereto, which are necessary to any pretrial motion, shall, under S.D. Fla. R. 10 I 3, be filed with the Clerk of Court at the time of filing the motion or response thereto if the materials are relied upon by the filing party.

The parties on all sides of this litigation have paid little heed to these rules, although the rule permits " the portions to be used" to be filed with either the motion for summary judgment or the response thereto. The minimal compliance with the rule by the parties has resulted in the court being furnished with only a few pages of some of the depositions, and none of the cross examination by the adverse party. It, therefore, has been a frustrating experience for the court to have been compelled to search the record time and again, in order to collate the portions of testimony furnished by counsel. These portions of deposition testimony were found scattered through the record and not filed as a complete deposition by counsel. The court however, must rely upon the fact that all necessary and relevant deposition and discovery evidence that the parties deemed important has been furnished to the court in support and opposition to

these several motions for summary judgment filed herein.

F. Notice to Parties of Final Deadline for Completion of Discovery.

Adhering to the mandate of Fed.R.Civ.P. 1 securing to all litigants in U.S. District Courts the right to "...just, speedy and inexpensive determination of every action.", it is the general practice in this district to set every civil case for pretrial conference shortly after the case is at issue.

Since all discovery must be completed at least five days before the pretrial conference under the provisions of S.D. Fla. R. 14G, the date ordered by the court for the conference is of critical importance. This date controls the time within which all discovery must be completed. See F.R.Civ.P. 16(b). With all discovery completed, the record is complete and the court can rule on any pending motions for summary judgment with all relevant facts in the record.

In this particular case, the court gave eight months notice, by written order, to all counsel of the pretrial conference date.

The parties had clear notice of the discovery cutoff dates in ample time to complete the relevant discovery pertinent to the subject matter. The court made abundantly clear to all parties that there would be no continuation of the discovery phase beyond the time provided by Rule 14G, both during oral arguments in open court and in written orders issued by the court.

With the foregoing principles in mind the court now turns to the motions for summary judgment filed by the defendants. The court has reviewed all the affidavits

submitted by the moving defendants and concludes that under the principles of Fontenot the defendants have satisfied their burden of showing the existence of no genuine issue of material fact with respect to the allegations made against them. the burden therefore, has shifted to the plaintiffs to show the existence of genuine issues of material facts. The court now reviews the proof the plaintiffs have submitted to satisfy their burden.

IV) The Plaintiffs Fail to Show a Genuine Issue of Material Fact with Respect to the Causation of Their Injuries

The court has conducted extensive review of the numerous evidentiary submissions filed by the plaintiffs in opposition to the various summary judgments. The complaint alleges all the defendants to be interrelated, and treats all the defendants as responsible for the bombing for this reason the court has considered all the filings as one. From this viewpoint, the court must grant summary judgment because the plaintiffs have failed to establish the existence of a material fact concerning the cause of their injuries. This is an essential element of a RICO action.[2] The causation link is missing in this record. Without it, the case fails.

Plaintiffs allege that they defendants have injured them in three general ways. First, Plaintiffs allege their business and property were harmed by the bombing at La Penca. Second, the plaintiffs contend that their business and property were harmed by the threats of kidnapping and murder made to their new sources, Carlos Rojas Chinchilla and David as well as the actual kidnapping of Chinchilla and

[2] Accordingly, the court has no need to, and therefore, cannot make a finding concerning the alleged § 1962 violations.

the kidnapping and murder of David. Finally, the plaintiffs allege that the defendants made threats of serious physical harm against them. The court now examines the evidence submitted to show a genuine issue of material fact with respect to the cause of these harms.

The plaintiffs' primary allegation is that the defendant, Amac Galil, disguised as a journalist named Per Anker Hansen detonated the bomb at La Penca press conference acting in conspirital concert with the other defendants. To survive defendants' motions for summary judgment,therefore, the plaintiffs must at least show that genuine issues exist with respect to two allegations: (1) that Hansen did the bombing, and (2) that Hansen was associated with the defendants or was part of the purported enterprise at the time of the bombing.

Plaintiffs have presented no direct evidence, nor eye-witness testimony showing that Hansen was at the press conference, let alone whether he set the bomb. Further, the plaintiffs have not presented any competent evidence to show that Hansen ever had explosives or that this individual was in fact the defendant Amac Galil. Circumstantial evidence has been presented which plaintiffs contend is sufficient to defeat defendants' motions for summary judgment. The court now reviews this evidence.

The court starts with the publication submitted by the plaintiffs concerning the La Penca bombing. Exhibit 43 of plaintiffs' opposition to Hull's motion. The publication was written by the plaintiffs and concludes that the journalist Per Anker Hansen, who was the defendant Amac Galil, caused the bombing at La Penca. Obviously, this evidence is patently inadmissable.

The plaintiffs have also submitted a report by the Costa

Rican authority OIJ. Exhibit 41 of plaintiffs' opposition to Hull's motion. The plaintiffs contend that the OIJ is the equivalent of the Federal Bureau of Investigation. In actuality, the plaintiffs have submitted a one page translation of a five page document originally written in Spanish. This translation concludes that Per Anker Hansen was a Danish national posing as a journalist for a European communications medium. The translation indicates that OIJ further concluded that Hansen carried with him a box whose characteristics corresponded to the debris found at the site of the bombing. The translation of the OIJ report does not conclude that Hansen actually did the bombing. This uncertified, unsigned translation in summary form of this purported official document is not admissible.

Plaintiffs have also submitted portions of the deposition of Fernandez Cruz Castro. Exhibit 49 of plaintiffs' opposition to Calero's motion. The plaintiffs asked Cruz (who appears to have worked with the OIJ) to either recall or recite the contents of a letter. The testimony submitted does not establish that Cruz had any familiarity with the document. Nevertheless, Cruz states, from memory, that the letter concluded the Per Anker Hansen committed the La Penca bombing. The plaintiffs have not established that this is an official investigative record, and, moreover, have not shown that the requirements of Fed. R. Evid. 803(8)f(B) or (C) have been met. The court finds this evidence is unreliable and will not consider it.

Plaintiffs have also filed portions of .the deposition of Eden Pastora, the alleged target of the bomb who states that he did not see the journalist known as Amac Galil at the La Penca press conference. Exhibit 3 of plaintiffs' opposition to Hull, p. 75.

The plaintiff, Martha Honey, also filed an affidavit with

the opposition papers to Calero's motion wherein she gives a summary of her notes of an interview by telephone of a Mr. Molinares of Molinares Rent a Car. During this conversation Mr. Molinares reviewed his records and told Martha Honey that Per Anker Hansen rented a car from him around March 9, 1984, and kept the car for 14 days. Ms. Honey also states that Mr. Molinares identified Per Anker Hansen as the same person whose picture appeared in the paper. Aside from the obvious evidentiary problems associated with this statement the alleged renting occurred over two months before the bombing at La Penca.

The court next turns to the filed portions of the deposition of Alberto Eduardo Guevara Bonilla (Guevara), Exhibit 14 of plaintiffs' opposition to Hull's motion. Mr. Guevara testified that he saw Per Anker Hansen after the bombing and that "His face was slightly burned, he has soot on his face, there were blood stains on his shirt, and he was in a wheelchair." Id. at 10. Guevara did not see Hansen after that. Guevara also testified that he saw some of the materials collected some 70 meters or so from the bombing site, including a wig worn by Hansen's woman companion. Guevara said the wig found around the explosion site was the same wig that he had seen on Hansen's woman companion because he recognized the peculiarity of the hair style. Guevara had seen Hansen and the woman companion on three separate occasions.

Plaintiffs also offer the Guevara deposition to show that Hansen was in the area around the relative time frame. Guevara testified he saw Hansen and a female companion on the day of the press conference at the Irazu Hotel.

Approximately twenty-two days before the bombing Guevara stated that he saw Hansen, the woman companion and defendant John Hull arriving together in an orange

Toyota. Entering a boat with an outboard motor, and heading northeast on the river. He stated that Hansen was carrying a metal case with a "fragile U.S.A. postage" tag on it, along with assorted cameras and camera equipment.

Guevara also testified that he saw Hansen and the woman companion at the end of March or early April 1984. Guevara stated that he was directed by memorandum dated in San Jose to make a vehicle available for Hansen. Hansen and the woman used the vehicle for approximately six hours and returned it to the post.

After considering the admissable evidence above the court finds the plaintiffs have made no showing that there is a genuine issue of material fact concerning the bombing at La Penca. At most the evidence could indicate that a genuine issue of fact exists concerning whether Hansen was in the La Penca vicinity around the time of the press conference. Whether Hansen was in the vicinity of the La Penca press conference is not an issue. The allegation of import once here is whether this person Hansen committed the bombing at La Penca. The evidence submitted by the plaintiffs fails to show that there is a genuine issue of material fact with respect to this contention.

Moreover, even if the plaintiffs could show that Hansen did the bombing at La Penca, summary judgment would be appropriate. The plaintiffs have not shown that Hansen was connected to any of the defendants, by proof sufficient to render any of them legally responsible for his actions as required by law. Although they made the allegation, they have not produced competent evidence that Hansen was the defendant Galil as alleged. In addition, the plaintiffs have not otherwise produced evidence that the defendant Hansen was paid by, worked with, associated with, or conspired with any of the other defendants.

Primarily, the plaintiffs attempt to link Hansen with the defendants Hull and Calero. They allege that these defendants had both the motivation and the means to assassinate Eden Pastora. Nonetheless, the fact the Hull and Calero had the motive and means to kill Pastora is not the controlling factual question here. The particular allegation of relevance here the contention that the defendants somehow are connected with Galil, acting as Hansen in the bombing.

Plaintiffs again use portions of the Guevara deposition to show that Hull and Hansen were together when they picked up the boat 22 days before the bombing. Exhibit 14 of plaintiff's opposition to Hull's motion. Eden Pastora testified in his deposition, Exhibit 3 of plaintiffs' opposition to Hull, that he received a radio transmission in the first days of May and was told by his companions that it was Hansen. Pastora deposition at 67-68. Pastora's testimony is patent hearsay without an exception.

Plaintiffs' rely upon the statements made by Jack Terrell. Exhibit 27 of plaintiff's opposition to defendant Hull; Exhibit 6 of plaintiffs opposition to defendant Calero. Plaintiffs cOntend that this is courtroom testimony made by Terrell during the libel trial against the plaintiffs in Costa Rica. No official transcript is provided, but the document reflects that Terrell said that he was personally present at two meetings which took place after the La Penca bombing. Plaintiffs allege that in these meetings a separate conspiracy to assassinate Pastora was discussed.

One meeting was purportedly held in December 1984 or January of 1985 in Calero's home in Miami, Florida. The document containing the purported testimony of Terrell reflected that the following were present: Felipe Vidal Santiago, John Hull, Rob Owens, Tom Posey, Lanny Duyck

and one man, unknown to Terrell who was later identified to him (by an unnamed person) as Amac Galil. Terrell stated that in this meeting "Felipe [Vidal] stated that we put a bomb under him and it didn't work because of bad timing. But no one used the name La Penca." Terrell also stated that he knew of no meeting in which John Hull met with the purported La Penca terrorist identified as Amac Galil. Finally, Terrell stated that he had no knowledge that John Hull either participated in the La Penca bombing himself or participated through an intermediary. Exhibit 27 at p. 83-89. Terrell's statement is contained in a publication entitled "La Penca; on Trial in Costa Rica, the CIA v. the Press," edited by Tony Avirgan and Martha Honey, plaintiffs. The testimony contained in plaintiffs' publication cannot be considered as admissible evidence. The court, therefore determines that Terrell's statement contained in plaintiffs' publication is inadmissible.

Plaintiffs also submit the depositions of Joseph Adams and Lanny Duyck who both took the fifth amendment with respect to questions concerning the two meetings mentioned in Terrell's statements. Exhibits 26 and 28 of plaintiff's opposition to Hull. As the court will discuss more in depth shortly, these inferences do not establish any connection between any of the defendants and Hansen.

Plaintiffs argue that when a witness asserts a Fifth Amendment privilege in response to a question, that the facts stated in the question can be used against not only the witness asserting the privilege, but all other parties. For example, the defendant Quintero asserted the Fifth Amendment to a question concerning the La Penca bombing. Plaintiffs suggest that a negative inference arises that applies to all defendants.

While a negative inference may be applied to other evidence against the person asserting the privilege, see Baxter v. Palmigiano, 425 U.S. 308 (1976), it cannot be applied to a defendant who did not take the Fifth Amendment.[3] Accordingly, this court will not give a negative inference to any assertion of the Fifth Amendment against any defendant other than the one asserting this privilege.

Moreover, the negative inference created against the defendant asserting the self incrimination privilege cannot alone satisfy the burden required by Fed.R.Civ.P. 56. In United States v. Rylander, 460 U.S. 752 (1983), the Supreme Court held that the negative inference drawn from a defendant's assertion of the Fifth Amendment could not substitute for evidence necessary to meet the burden of production. Plaintiffs only rely on the depositions of the defendants asserting this privilege as proof of the conspiracy for La Penca. See Quintero deposition at pages 82, 97; See also depositions of Secord and Hakim. The plaintiffs present no other evidence to show that these defendants actually did the bombing at La Penca, or were associated with Hansen. Accordingly, even if the court agreed with plaintiffs and permitted the drawing of a negative inference to arise from these assertions against these defendants, this would be insufficient to defeat summary judgment.

---

[3] The law apparently recognizes that a jury may under limited circumstances draw reasonable inferences against an employer from an employee's assertion of the 5th Amendment. See E.H. Boerth Co. v. LAD Properties, 82 F.R.D. 635, 645 (D.Minn. 1979). Aside from the fact that this type of relationship is not alleged to exist between the defendants here, this court is bound under these circumstances by the Supreme Court's opinion in Rylander, 460 U.S. 752 (1983).

Plaintiffs also produce some evidence with respect to the defendants' involvement in the transshipment of C-4 explosives. Plaintiffs contend that the explosives used at La Penca were C-4. To support this position, the plaintiffs again rely upon the deposition of Fernando Cruz Castro. Exhibit 49 of Defendant's Opposition to Singlaub. As the court noted before, this deposition, consisting of statements by Mr. Cruz about a letter concerning the bombing at La Penca, is not competent or trustworthy to be admissible under recognized legal standards. Accordingly, this evidence is inadmissible.

Moreover, the other evidence plaintiffs submit concerning C-4 explosives did not specifically relate to the La Penca bombing, either in time or place. They make no showing that this explosive can be directly, or indirectly, traced to the explosive used at La Penca. Plaintiffs attempt to make a showing that these defendants were engaged in the shipment of C-4 explosive to the Central America region. For example, Joseph Adams in his deposition, Exhibit 28 of Plaintiff's Opposition to Hull, took the Fifth Amendment when asked a question whether he had seen C-4 stored in Central America, but answered in the negative when asked whether he had seen C-4 explosives stored in Dade County, Florida during the period of his employment with Adolfo Calero. Apparently, plaintiffs attempt to use Adams' assertion of his Fifth Amendment privilege against Calero to show that C-4 explosives were in Central America. Plaintiffs having failed to make any showing that there were C-4 explosives associated with the enterprise or with the bombing, the court finds that this negative inference does not establish a showing that a material issue of fact exists with respect to the enterprise causing the bombing. Plaintiffs' showing also fails to establish that there was any connection with the C-4 and Hansen, or the C-4 explosive and his relationship to the enterprise.

Plaintiffs also submit evidence concerning the defendants' transshipment of C-4 explosives after the La Penca bombing. For example, they provide passages from the defendant Singlaub's congressional testimony before the Iran Contra Committees of Congress concerning the purchasing of C-4 explosives through the Iran Contra network in December 1986. See Exhibit 43 of plaintiffs' opposition to Singlaub's Motion. In addition, plaintiffs also rely upon the deposition of Sam Hull, Exhibit 10 of Plaintiff's Opposition to Singlaub's Motion, who stated that he requested C-4 for his missions in Central America in the summer of 1985, one year after the La Penca bombing.

Plaintiffs' showing here is insufficient to establish a genuine issue of material fact with respect to whether Hansen was connected with the defendants as part of the purported enterprise at the time of the bombing. The showing may establish issues of fact concerning whether Hansen was in the vicinity of La Penca at the time of the incident, whether Hansen in his alleged role as a newspaperman spoke.with one or two of these defendants, and that C-4 explosive was shipped to Central America after the La Penca bombing. Plaintiffs may also have made a showing that a purported conspiracy to kill Eden Pastora arose six months after the La Penca bombing occurred, but they make no showing the Hansen was the defendant Galil or that Hansen or Galil were associated with the enterprise, or worked with the enterprise, or were paid by the enterprise, or any of the defendants.

To find the required showing of causation here, the court cannot string these threads together with the submitted evidence concerning some of the defendant's motivations to kill Eden Pastora, See e.g., Statement of Aguado, Exhibit 38

of Plaintiff's Opposition To Hull[4] or evidence of other alleged bad acts, See e.g., Statement of Jesus Garcia, Exhibit 29 of Plaintiff's Opposition To Hull's Motion (speaking in inadmissible manner of attempts to assassinate U.S. Ambassador in Costa Rica). The actual event and motivation, absent any direct evidence of a link, in insufficient to meet the summary judgment burden with respect to the essential element of causation.[5]

---

[4] This exhibit is an uncertified translation of a statement made by Aguado to a notary public in Costa Rica. The statement says that about a month before the La Penca bombing, Aguado was with Hull and a Mr. Mariano Montealegre at El Higueron in Muelle de San Carlos. The statement continues by saying that a Mr. Juan Jose Saborio Campos (who is not a defendant) joined them. The statement reflects that Aguado did not know, nor had ever seen Campos before that day. The statement indicates that Montealegre introduced Aguado to Campos, who, without any preamble, stated that "It was necessary to look for a fast way to get rid of Eden Pastora.. Aguado stated that he left immediately thereafter, and spoke to Montealegre after Campos left, and Montealegre stated that Campos "was crazy." Of course, this particular exhibit would be inadmissible at trial and, therefore, cannot be considered on this summary judgment motion.

[5] The record also indicates that the plaintiff suffered no cognizable injury under RICO from the La Penca bombing. The plaintiff Avirgan has alleged that a television camera he was using was damaged by the bombing. The defendant Owen notes that the plaintiff Avirgan raised a party in interest question in his deposition. At pages 343-344 of his deposition, Avirgan indicated that the damage to the camera was paid by a Lloyd's of London insurance policy and ABC News, Avirgan's employer. Under the principles of equitable subrogation, which Florida recognizes, see Dixie National Bank of Dade County v. Employers Commercial Union Ins. Co., 463 So.2d 1147 (Fla. 1985), the entity compensating for another's loss has the right

Plaintiffs have also alleged that this enterprise participated in other acts of racketeering that caused the plaintiffs injuries after La Penca bombing. The plaintiffs allege that these racketeering acts were designed to thwart the plaintiffs' investigation of defendants' relationship to the La Penca bombing.[6] Plaintiffs also make an insufficient

---

to recover from the entity causing the loss. Apparently, under this analysis, the only parties who could recover for the camera's damage would be Lloyd's of London and ABC, News.

If this proposition were true, Avirgan would have no La Penca injury capable of being remedied by RICO. His only allegations remaining regarding La Penca would be the loss of income due to physical injuries allegedly inflicted by the bombing. In this circuit, recovery for these injuries under RICO is prohibited. See, Grogan v. Platt, 835 F.2d 844 (11th Cir. 1988).

[6] The court finds that the plaintiffs cannot suffer any injury to their news business or any property right by the alleged threats, kidnapping and murder of their news sources. The plaintiffs cannot have a property right in these individuals. The plaintiffs' expectation that these news sources would continue giving them information is not an entitlement, but only a speculative proposition.

The Plaintiffs' previous reliance on Carpenter v. United States, 108 S.Ct. 316 (1987), is inapposite here. The Carpenter court found a newspaper's use of information already within its control to be a protected property right. The newspaper had "possession" of this information because the sources had given one of the newspaper's reporters some relevant facts that the reporter turned into a news article. These facts are not alleged by the plaintiffs. The analysis that follows is given only for the purpose of indicating that the plaintiffs have failed to make a sufficient showing with respect to these allegation.

showing to withstand summary judgment with respect to these allegations.

Plaintiffs first allege that they were injured in their business and property by the defendants' threats to kidnap and murder two of their news sources - a Carlos Rojas Chinchilla and David. Moreover plaintiffs allege that their business and property were further injured when David was murdered and Chinchilla kidnapped.

To support these allegations plaintiffs offer the deposition testimony of Carlos Rojas Chinchilla (Rojas), Exhibit 49 of Plaintiff's Opposition to Hull and as Exhibit to Plaintiff's Opposition to Calero. Rojas testified that David, a Contra giving inside information to plaintiffs, and himself, were kidnapped and driven for several hours to a field. Mr. Rojas never identified the field or the men who had kidnapped him, but he stated that the unknown men said they were going to call John Hull's house, or where ever John Hull was. Rojas Deposition at 190. Rojas testified that he and David struck the man with the gun and ran away to safety. The court finds that the testimony of Carlos Rojas repeating comments of one of his kidnappers is inadmissible hearsay.

Martha Honey also testified "We also now have been told by Costa Rican and Contra sources, officials, that David, our witness was killed on John Hull's farm." Deposition of Martha Honey, Exhibit 45 of Plaintiff's Opposition To Hull. Because Martha Honey's testimony is hearsay evidence the court finds it inadmissible.

Accordingly, because this testimony does not establish any connection between the defendants and these alleged acts, the plaintiffs have failed to make the requisite showing that a genuine issue of material fact exists with respect to these

allegations.

The court now turns to the allegations concerning the threats of physical harm to the plaintiffs. Martha Honey testified that she received death threats over the telephone around the time that David disappeared. See Exhibit 45 of Plaintiff's Opposition to Hull. Ms. Honey never provided any information connecting the threats she received to any member of the enterprise. Plaintiffs also offer the testimony of Carmen Araya. Exhibit 46 of Plaintiff's Opposition to Hull. Ms. Araya, an employee of the plaintiffs, received a death threat from an unknown person while she was having ice cream at a shop. She testified that someone came up to her and asked if she worked for Martha and Tony and said to be careful because "I work for John Hull and must be careful." Araya deposition at 21-22. Again no showing was made as to whom the person was who made the threat to her or for whom the person worked for except for the hearsay testimony that the threatener worked for John Hull.

Finally, plaintiffs also seek to use the deposition testimony of Glen Robinette. Exhibit 41 of Plaintiff's Opposition to Secord. Robinette testified that he was hired by defendant Secord to investigate the plaintiffs with respect to this law suit. Robinette testified that he met with Hull and received several affidavits which he stated indicated that Avirgan and Honey approached persons presently in jail to provide false testimony. The affidavits were never filed and the testimony of Robinette does not show that any of the defendants were attempting to interfere with plaintiffs' news gathering business. Accordingly, plaintiffs have failed to make the requisite showing that a genuine issue of material fact exists with respect to interference with their business or that threats of physical harm were made to them.

The plaintiffs have not made a showing of a genuine

issue of material fact with respect to any of their allegations concerning the cause of their purported injuries. Causation is an essential element of a RICO action. Accordingly, the defendants who have moved are entitled to summary judgment.

V) Summary Judgement On The State Law Claims

Because the plaintiffs have failed to show that a genuine issue exists with respect to the causation of their injuries, the defendants are entitled to summary judgment on the state law claims as well. Summary judgment is proper on the Florida RICO claim because summary judgment is granted on the Federal RICO claim, which the State claim mirrors. The battery, trespass, and the loss of consortium counts all revolve around the alleged bombing at La Penca. Because the plaintiffs have made no showing that a genuine issue of material fact exists with respect to the defendants causing this bombing, plaintiffs are not entitled to present these claims to the jury. Similarly, because the assault and mental distress claims revolve around the alleged threats made to the plaintiffs, and the plaintiffs have made no showing of a genuine issue of material fact with respect to the threats, defendants are entitled to summary judgment on these counts.

VI) Conclusion

As set forth above, the plaintiffs have made no showing of existence of genuine issues of material fact with respect to either the bombing at La Penca, the threats made to their news sources, or threats made to themselves. Plaintiffs, therefore, cannot show that their injuries were proximately caused by the defendants. Both RICO causation and tort law causation must be proven in every case. The defendants are, therefore, entitled to summary judgment.

With respect to the non-moving defendants, the Court cannot try them in the interests of fairness and judicial economy. The plaintiffs have been on notice that these defendants would be subject to dismissal by the challenges made in the other defendant's motions. These challenges went to the heart of the plaintiff's theory, which now cannot be submitted to the jury. To try these defendants would be unfair to them, and as Judge Rubin stated, unfair to the other litigants "waiting impatiently in the judicial queue". Fontenot, 780 F.2d at 1194. Accordingly, all the defendants are entitled to summary judgments. It, therefore, is

ORDERED and ADJUDGED summary judgment is hereby entered for and on behalf of each of the defendants in this case.

DONE and ORDERED in chambers at the United States Courthouse, Federal Courthouse Square, Miami, Florida, this 23rd day of June 1988.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 86-1146-CIV-KING

Entered 2 February, 1989
Reported as Avirgan v. Hull,
705 F.Supp. 1544 (S.D.Fla. 1988)

Tony AVIRGAN, et al.,
Plaintiffs,

v.

John HULL, et al.,
Defendants.

_____/

ORDER GRANTING MOTIONS FOR COSTS AND ATTORNEYS, FEES

Tony Avirgan was injured by the explosion of a bomb in the jungle at La Penca, Nicaragua. He accused the defendants of exploding the bomb in an attempt to assassinate Eden Pastora, a contra leader. After two years of protracted and extensive discovery of scores of witnesses across the United States, Costa Rica, and elsewhere, the plaintiffs were unable to produce a single witness who could state that the defendants exploded the bomb or were responsible for the assassination attempt. See Avirgan v. Hull, 691 F.Supp 1357 (S.D. Fla. 1988).

The attorneys for the plaintiffs, The Christic Institute, must have known prior to suing that they had no competent evidence to substantiate the theories alleged in their complaint. Plaintiffs' lead counsel, Daniel Sheehan, supplemented the complaint with a detailed affidavit outlining the purported testimony of seventy-nine witnesses who Mr. Sheehan stated had factual knowledge that these defendants set and exploded the bomb that caused plaintiff's injuries.

The seventy-nine witnesses were identified only by number. Plaintiffs' counsel refused to identify the names and addresses of the vast majority of the seventy-nine witnesses until ordered to do so by the court. Plaintiffs appealed the order requiring them to disclose the identities of the witnesses. These actions by plaintiffs and their counsel prevented the defendants from taking depositions of these witnesses, and delayed orderly discovery for many months.

After all the appeals were exhausted and plaintiffs complied with the order to reveal the names of their witnesses, the reason for the plaintiffs' adamant refusal became apparent. Specifically, the names and identities of approximately twenty of the seventy-nine witnesses were totally unknown to Mr. Sheehan or the plaintiffs. Several of the disclosed witnesses later stated under oath that they did not know Mr. Sheehan, had never spoken to him, or flatly denied the statements he had attributed to them in his affidavit. The remaining witnesses did not furnish any statements that would be admissible. Much of the testimony of these witnesses involved conversations they allegedly had with other people, which is the hearsay testimony inadmissible at a trial.

Based upon the affidavit of plaintiffs' counsel, the

plaintiffs were permitted to conduct two years of discovery. This discovery failed to produce any admissible evidence regarding causation. Avirgan v. Hull, 691 F.Supp 1357. The Christic Institute's allegations, essentially maintaining that the plaintiffs were victims of a wide-ranging conspiracy spanning thirty years and involving the activities of former United States Government officials, CIA operatives, Colombian druglords and arms merchants in Cuba, Southeast Asia, the Middle East, and Central America, were based upon unsubstantiated rumor and speculation from unidentified sources with no first hand knowledge. These actions establish that plaintiffs "had every reason to know they stood no chance of proving" that the defendants were responsible for the injuries to Tony Avirgan. Collins v. Walden, 834 F.2d 961, 964 (11th Cir. 1987). This abuse of the judicial process requires that the plaintiffs make the defendants whole by paying the fees the defendants have been forced to expend for attorneys in this action. Alyeska Pipeline Service Co. v. Wilderness Society, 421 U.S. 240 (1975); Collins, 834 F.2d at 964; Gordon v. Heimann, 715 F.2d 531 (11th Cir. 1983); see also 28 U.S.C. § 1927 (1986).

The motions for costs and attorney's fees filed by the prevailing defendants are the last remnants of this case. The court now addresses the questions raised by these motions.

A. COSTS

Normally, an award of costs is relatively straight forward. Federal Rule of Civil Procedure 54(d) provides that a court may tax costs in favor of the prevailing party. The particular costs that can be taxed are detailed in 28 U.S.C. § 1920. This section expressly provides that the following items may be taxed as costs:

1) Fees of the clerk and marshal;
2) Fees of the court reporter for all or any part

of the stenographic transcript necessarily obtained for use in the case;

3) Fees and disbursements for printing and witnesses;

4) Fees for exemplification and copies of papers necessarily obtained for use in the case;

5) Docket fees under section 1923 of this title;

6) Compensation of court appointed experts, compensation of interpreters, and salaries, fees, expenses, and costs of special interpretation services under section 1828 of this title.

Some of the successful defendants have filed Bills of Costs. Although the plaintiffs have failed to make specific objections to requested costs, the court will analyze the requests and determine the appropriate amounts based on the statutory guidelines. Specifically, the court will disallow "costs" that are not set out in 28 U.S.C. § 1920. See Crawford Fitting Company v. J.T. Gibbins, Inc., 107 S.Ct 2494 (1987).

1ADOLFO CALERO

Defendant Calero filed an affidavit listing costs totalling $1,935.64. The affidavit states that the following costs have been expended in connection with the defense of this case:

DISBURSEMENTS	AMOUNTS
Messenger Service	$80.00
Postage	102.94
Photocopies	1,225.65
Parking	10.10
Mileage	1.20
Telefax Transmissions	34.00
Word processing costs	280.00

Depositions	201.75
TOTAL DISBURSEMENTS:	$1,935.64

The statutory provision does not provide for the taxation of messenger service, postage, parking, mileage, telefax and word processing costs, so the court disallows the requested costs. The request for "deposition" costs presumably is for costs incident to taking a deposition. The court, consequently, taxes as costs the "deposition" and the photocopying of depositions. Plaintiff Calero, therefore, is awarded $1,427.40 in costs.

2. JOHN HULL

Hull has listed four types of costs in his Bill of Costs. He requests the following costs:

DISBURSEMENTS	AMOUNTS
Fees for exemplification and copies of papers necessarily obtained for use in case	$1,058.75
Costs incident to taking of depositions	1,602.70
Long distance phone expense	148.98
Postage	204.82
TOTAL DISBURSEMENT:	$3,015.25

Because 28 U.S.C. § 1920 does not provide for them, the court disallows the long distance phone charges and again denies the postage costs. The defendant is entitled to

$2,661.45 in taxable costs.[1]

3MOISES NUNEZ RUIZ

Nunez Ruiz has listed two expenses, both of which are enumerated in § 1920. Specifically, he has made the following requests:

DISBURSEMENTS	AMOUNTS
Fees for printing	$644.85
Translating services	92.00
TOTAL DISBURSEMENT	$736.85

The prevailing defendant is entitled to these specifically enumerated costs totalling $736.85.

4ROBERT OWEN

Defendant Owen submitted a Bill of Costs that contained the following two items:

DISBURSEMENTS	AMOUNTS
Fees for copies of papers necessarily obtained for use in the case	$2,844.00
Costs incident to taking of depositions	2,774.90
TOTAL DISBURSEMENTS	$5,663.90

The defendant provided detailed attachments to indicate the necessity of these items. The court, accordingly, awards

---

[1] This defendant, like several others, has filed a motion under Rule 30(g)(2) for fees and cost. The defendant, however, has not listed these expenses, so the court presumes the amount allowed under 30(g)(2) is included in the total request.

costs totalling $5,663.90 for defendant Owen.

5RICHARD SECORD

The following requests were filed by defendant Secord:

DISBURSEMENTS	AMOUNTS
Transcripts	$2,925.30
Xeroxing	2,283.10
Courier Service	958.95
Telecopy and Telex	225.00
Postage	401.88
Telephone	834.75
Travel Expenses	7,112.04
TOTAL DISBURSEMENTS:	$14,741.02

Because the statute does not allow courier services, telecopy, telex, postage, telephone, and travel expenses, these amounts are disallowed. The request for transcripts and xeroxing expenses is appropriate, so the defendant is entitled to $5,208.40 for costs.

6. RONALD MARTIN, JAMES McCOY and MARIO DELL AMICO

All three defendants were represented by the same law firm. The attorney stated in the Bill of Costs that costs incident to taking of deposition and the copying is $4,373.85. These requests are entirely appropriate and the court grants the request. The defendants also ask for the following other costs:

DISBURSEMENTS	AMOUNTS
Air Fare	$154.00
Long distance telephone	365.98
Messenger service	230.90

Postage	128.25
Secretarial overtime	200.98
Telecopying	232.00
Parking and other miscellaneous costs	140.48
Legal research costs	157.50
Word processing costs	42.00
Word processing overtime	45.00
TOTAL DISBURSEMENT:	$1,647.04

Section 1920 does not provide for any of these costs, so they are all disallowed. Consequently, the court awards only $4,373.85.

7. RAFAEL QUINTERO, THOMAS CLINES and ALBERT HAKIM

Like the previous defendants, Quintero, Clines and Hakim all retained one law firm. The law firm submitted the following list of costs:

DISBUREMENTS	AMOUNTS
Xeroxing	$1,167.00
Courier services	144.40
Telephone and telecopy	193.17
Postage	162.73
Travel expenses	2,162.47
5% Fla. Sales Tax 7/1 - 12/31/37	8.12
TOTAL DISBURSEMENTS:	$3,837.89

All of these expenses, except xeroxing, are disallowed because they fall outside the statute. The court does allow the photocopying expenses totalling $1,167.00 as recoverable costs.

8. JORGE GONZALEZ

Through an attorney's affidavit, defendant Gonzalez requests the following necessarily incurred disbursements:

DFISBURSEMENTS	AMOUNTS
Postage	$65.25
Long distance telephone calls	12.34
Courier service	16.85
Photocopies	798.30
TOTAL DISBURSEMENTS:	$892.74

Most of the requested costs are not within the statutory provision. The only recognized cost is for photocopying. Accordingly, the court taxes as cost $798.30 for photocopies.

9. JOHN SINGLAUB

Defendant Singlaub vigorously defended against this case and, consequently, has submitted two Bills of Costs totalling more than $100,000. The list of costs, consisting of 28 pages, can be summarized as follows:

DISBURSEMENTS	AMOUNTS
Fees of court reporter for transcripts necessarily obtained for use in the case	$24,698.48
Fees and disbursements for printing	2,194.74
Fees for witnesses	177.00
Fees for exemplification and copies of papers necessarily obtained for use in case	19,271.59
Docket fees under 28 U.S.C. § 1923	20.00
Long distance phone calls	3,241.49
Witness subpoenas	280.00
Postage and delivery	16,919.82
Overtime office expenses	6,300.50

Interpreter costs	168.76
Travel expenses	30,875.09
Miscellaneous	4,469.89
TOTAL DISBURSEMENTS	$108,617.36

Despite the defendant's detailed report, the plaintiffs failed to specifically object. The court, however, is guided by the statutory guidelines set forth in § 1920 and disallows the requests not listed in the statute. The defendant, consequently, is not entitled to expenses for long distance phone calls, witness subpoenas, postage, delivery, overtime staff, travel and miscellaneous cost. With these costs deleted, the defendant's total allowed amount is $46,530.57.

In addition to the costs allowed under Rule 54(d), the defendant has submitted a request for costs and fees under Rule 30(g)(2) based on the plaintiffs, failure to properly subpoena witnesses noticed for deposition or otherwise adequately arrange for their attendance at the depositions in Costa Rica.[2] Because of the plaintiffs' failure, defendant Singlaub incurred the following expenses:

DATE	DESCRIPTION	AMOUNTS
5-1-88	Airfare Miami/San Jose, C.R.	$ 280.00
5-1-88	Departure Tax	10.00
5-1-88	Attorney's Fees/Preparation for Depositions	400.00
5-2-88	Attorney's Fees/Wasted Day	800.00
5-2-88	Two Meals	14.00

[2] The transcript of the deposition demonstrates that the plaintiffs did not take the appropriate measures to insure the witnesses' attendance at the deposition. The court finds that Rule 30(g)(2) of the Federal Rules of Civil Procedure applies and the plaintiffs should compensate the defendants for these unnecessary expenses.

5-2-88	Transcript of Proceedings and Appearance	127.50
5-4-88	Hotel Bill	105.00
5-4-88	Cab ride to airport	10.00
5-4-88	Departure Tax	4.50
5-4-88	Airfare San Jose/Miami	280.00
5-4-88	Attorney's Fees/Travel Time	400.00
7-8-88	Attorney's Fees/Preparation of this Motion	100.00
	TOTAL	$2,531.00[3]

The court grants all of these expenses, so the defendant's total amount allowed is $49,061.57.

10. THEODORE SHACKLEY

Defendant Shackley has filed a Bill of Costs for $20,330.06. The defendant requests the court to tax the following as costs:

DISBURSEMENT	AMOUNT
Fees of the court reporter for all or any part of the transcript necessarily obtained for use in the case	$795.50
Fees for witnesses	35.00
Fees for exemplification and and copies of papers necessarily obtained for use in the case	8,072.14
Computer legal research	5,189.99

[3] The attorneys' fees listed here will be deleted from the court's consideration in awarding attorneys, fees in section B of this order.

Travel	2,043.11
Telephone and telecopier	963.59
Postage and delivery	1,601.68
Staff overtime	615.30
Interlibrary loans	153.83
Miscellaneous	859.92
TOTAL DISBURSEMENTS	$20,330.06

Section 1920 does not provide for computerized legal research,[4] travel expenses, telephone, telecopier, postage, delivery, staff overtime, interlibrary loans, nor miscellaneous requests, so the court denies these amounts. Defendant Shackley, therefore, is entitled to the remaining items totalling $8,402.14.

B. ATTORNEYS' FEES

As stated in the introduction, the court has also decided to award attorneys, fees to the prevailing defendants.[5] The court, therefore, now must determine a reasonable hourly rate for each defendant's attorney and assess the time claimed by the attorneys. Norman v. Housing Authority of City of Montgomery, 836 F.2d 1292, 1303 (11th Cir. 1988). The decision regarding the appropriate hourly rate may be made either by analyzing the affidavits submitted by counsel or, if this documentation is insufficient, by relying upon the court's expertise. Id. at 1304. Likewise, the determination of hours reasonably expended may be based on

---

[4] See also Roberts v. Charter National Life Ins., 112 F.R.D. 411 (S.D. Fla. 1986).

[5] This award is made coextensively pursuant to the "bad faith" exception to the American Rule, see Alyeska Pipeline Service Co., 421 U.S. 240 (1970), 28 U.S.C. § 1927 (1986), and Fed.R.Civ.P. 11.

documentation or, if this evidence is inadequate, the court's own exprience. With these principles in mind, the court will address each defendant's request.

1ADOLFO CALERO

The law firm that represented defendant Calero has requested fees totalling $57,676.75. Based on an affidavit filed by an attorney not affiliated with the firm, the court finds that the rates attributed to the three lawyers are reasonable by comparison in this legal community. Specifically, the rates of $150.00 per hour for an attorney with eight years experience, $200.00 per hour for a lawyer with eighteen years experience, and $85.00 per hour for a newly admitted attorney are reasonable.

In addition to finding the hourly rate reasonable, the court also believes that the time claimed is reasonable. Although the attorneys have not specifically documented the hours expended, the court's experience with this case and similar cases compels the court to find the total award reasonable. The court inferentially finds the hours worked reasonable. Defendant Calero, therefore, is entitled to $57,676.75 in attorney's fees.

2. JOHN HULL

The attorney for John Hull apparently charged the client based on a local rate of $100.00 per hour and an out-of-town rate of $150.00 per hour. The court, in its experience, disallows the differential rates and, consequently, applies the local rate of $100.00 per hour to all of the attorney's entries. The detailed entries reasonably portray the amount of hours expended by the attorney. Based on the uniform rate of $100.00 per hour, defendant Hull is entitled to fees totalling $67,380.00.

3. MOISES NUNEZ RUIZ

Counsel for the defendant filed an affidavit that states he has been admitted to practice in Florida for approximately 13 years and charges $150.00 per hour. The court, again, finds this hourly rate reasonable. Counsel has also clearly identified the services he has rendered for his client. The itemized services bill indicates that counsel spent a reasonable amount of time on the case, so the court awards attorney's fees in the amount of $4,913.52.

4. ROBERT OWEN

Defendant Owen, represented by a District of Columbia law firm, requests attorneys fees totally $67,509.10. Several attorneys within the law firm represented Mr. Owen, but 94% of the work was performed by an attorney with 13 years of experience, who charged initially $135.00 per hour and ultimately $165.00 per hour. The court finds these rates reasonable based on the attorney's experience and the locale in which he practices. Moreover, the court, after reviewing the time sheets, finds the number of hours expended to be reasonable. Mr. Owen, therefore, is entitled to $67,509.10 in attorneys' fees.

5. RICHARD SECORD

The affidavit submitted by counsel is fairly broad, but based on the documentation and the court's experience, the requested amount for attorneys' fees is reasonable. Specifically, the range of hourly rates was between approximately $75.00 per hour to $190.00 per hour. Moreover, in light of the multiple appearances of counsel and numerous documents filed in this case, the number of hours expended by the law firm is reasonable. The court,

consequently, awards attorneys' fees totalling $109,854.00.

The defendant has also requested $16,742.67 for attorneys' fees based on a consultation with another law firm regarding RICO law. The request, however, only states that the fees total $16,742.67. The request does not mention an hourly rate nor hours expended. Despite the court's expertise, it cannot merely guess at an appropriate amount. This request, therefore, is denied.

6. RONALD MARTIN, JAMES McCOY and MARIO DELL AMICO

One law firm represented all three defendants in this litigation. The rates for the attorneys in this case range from $65.00 per hour for associates to $225.00 per hour for a senior partner. The court finds these rates reasonable. With respect to the time billed, the one-inch thick stack of the billing sheets more than adequately details the activities of all of the attorneys involved. The court, therefore, grants the request for fees totalling $79,336.88.[6]

RAFAEL QUINTERO, THOMAS CLINES, and ALBERT HAKIM

All three defendants were represented by one law firm. Additionally, Quintero retained separate trial counsel. The documents in the case, including the motion for attorneys' fees, were signed by the law firm representing the three defendants. Consequently, based on the previous filings of the attorneys and their appearances in court, the court can

---

[6] This amount reflects a $640.50 deduction from the defendants, request because of two accidentally placed billing entries.

supplement the inadequate affidavit of the firm that represented all three defendants. Moreover, the attached affidavit regarding hours worked and hourly rates is consistent with the court's experience and the other defendants' requests. Conversely, the affidavit submitted by trial counsel for Quintero is insufficient and the court is unfamiliar with counsel because the case did not proceed to trial. The request for fees for trial counsel, consequently, is denied. The court, however, does award Quintero, Hakim and Clines $89,984.40 in attorneys' fees.

8JORGE GONZALEZ

The court is confronted with another insufficient affidavit regarding hours worked and hourly rate. The court, again relying on its experience and expertise, finds the attorneys' hourly rate and hours expended reasonable. Consequently, the request for 283.9 hours at $150.00 per hour totalling $42,585.00 is granted.

9. JOHN SINGLAUB

Singlaub's attorney filed forty-eight pages of billing sheets detailing the tremendous number of hours expended in this case. Moreover, the documentation and accompanying affidavits indicate that the attorneys charged reasonable hourly rates of $100.00 per hour for associates and $175.00 per hour for partners. Combining these hourly rates with the 2062 hours expended in the case, defendant Singlaub is entitled to $297,446.75 in attorneys' fees. Because the court previously awarded $1,200.00 of these fees under Rule 30(g)(2), the amount awarded here is reduced to

$296,246.75.[7]

10. THEODORE SHACKLEY

Defendant Shackley hired a Washington, D.C. law firm to represent him in this action. The law firm has complied with every requirement of Norman. Specifically, the attorneys have fully detailed the activities of the lawyers involved in the case and listed the hourly rate of each attorney.[8] Moreover, the fee petition is "well-prepared" because it includes a summary of each attorney's hours and a monthly listing of fees. See Norman, 836 F.2d at 1303. In light of the reasonable hourly rates and reasonable hours expended, the court awards defendant Shackley attorneys' fees totalling $139,844.10.

11. THOMAS POSEY

Defendant Posey, currently representing himself, has filed a motion for attorney's fees with the amount to be determined at a later date. Because the defendant is pro se, the court will allow him until February 24, 1989 to file an itemized description of his previous attorney's hourly rates and hours expended on this case.

Based on the previous discussion, the court ORDERS and ADJUDGES that the defendants are entitled to the following amounts:

---

[7] Defendant Singlaub also retained two other lawyers. Unlike the attorneys awarded approximately $300,000.00, these attorneys did not provide the court any basis to determine an appropriate award. Their requests, therefore, are denied.

[8] The attorneys have also attached an affidavit stating that the hourly rates are reasonable in these types of cases.

ATTORNEYS' FEES		COSTS	TOTAL
CALERO	$57,676.75	$1,427.40	$59,104.15
HULL	67,380.00	2,661.45	70,041.45
NUNEZ RUIZ	4,413.52	736.85	5,150.37
OWEN	67,509.10	5,663.90	73,173.00
SECORD	109,854.00	5,208.40	115,062.40
MARTIN, McCOY, DELAMICO	79,336.88	4,373.85	83,710.73
QUINTERO, CLINES, HAKIM	89,984.40	1,167.00	91,151.40
GONZALEZ	42,585.00	798.30	43,383.30
SINGLAUB	296,246.75	49,061.57	345,308.32
SHACKLEY	139,894.10	8,402.14	148,296.24
TOTAL	$954,880.50	$79,500.86	$1,034,381.36

FURTHER ORDERS and ADJUDGES that defendant Posey has until February 24, 1989 to file the appropriate documentation for determining the amount of attorneys' fees.

Let execution issue.

DONE and ORDERED in chambers at the United States District Courthouse, Federal Courthouse Square, Miami, Florida this 2nd day of February, 1989.

JAMES LAWRENCE KING
CHIEF U.S. DISTRICT JUDGE
SOUTHERN DISTRICT OF FLORIDA

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 86-1146-CIV-KING

Entered on February 24, 1989
Reported as Avirgan v. Hull,
125 F.R.D. 189 (S.D.Fla. 1989)

Tony AVIRGAN and Martha Honey

Plaintiffs,

v.

John HULL, et. al.,

Defendants.

ORDER CLARIFYING ORDER DATED FEBRUARY 2, 1989

Defendants bring a motion to clarify this court's order of February 2, 1989. They seek to determine against whom the fees and costs where awarded. The plaintiffs have responded by arguing that a procedural bar divests this court's jurisdiction to reconsider this order.

The court finds no merit to the plaintiffs' contentions. They argue that their filing of a notice of appeal immediately divests this court of all jurisdiction over the order that is the subject of the appeal. Aside from the fact that this argument runs contrary to Fed. R. App. P. 12 and

established precedent, the record reflects that the notice of appeal was actually filed the same day the motion for clarificationwas. Accordingly, the notice of appeal could not in fairness to all parties preempt this court's consideration of a motion filed that same day. Accordingly, the court will address the issues raised in the defendants' motion.

As this court's order dated February 2, 1989 fairly indicates, liability for the costs and fees must rest jointly and severally with Daniel Sheehan, Esq., The Christic Institute, and the plaintiffs, Tony Avirgan and Martha Honey. The court now addressed the reasons underlying this decision.

As a preliminary matter, the court notes that the plaintiffs
are confused over the court's use of the word "coextensively" in its February 2, 1989 order. In footnote 5 of that order, the court indicated that the award was made "coextensively" pursuant to the "bad faith" exception, 28 U.S.C. § 1927, and Fed. R. Civ. P. 11. This language indicates that each of these authorities, separate unto itself, support the entire award. Of course different legal standards govern the award under each authority. The court applied these differing standards and found that the entire award was supported in toto by Fed. R. Civ. P. 11, in toto by 28 U.S.C. § 1927, and in toto by the "bad faith" exception. Essentially, the award mechanism is logical, for an award pursuant to the "bad faith" exception or 28 U.S.C. § 1927 necessarily implies an award under Fed. R. Civ. P. 11 where many of the reasons for the bad faith award center around or relate back to signed pleadings that violated Fed. R. Civ. P. 11.

Daniel Sheehan, Esq. must be liable. He was lead counsel for the plaintiffs. He formulated and put into motion the litigation strategy and tactics that justified the entire award under the bad faith exception and 28 U.S.C. §

1927. He also signed the complaint and affidavit upon which the court justified the entire award under Fed. R. Civ. P. 11. Moreover, as lead counsel, he neglected his continuing obligation under all three authorities to assure that the allegations in the complaint and in the affidavit were borne out in the discovery process. Mr. Sheehan is liable for the entire amount.

Similarly, The Christic Institute should be liable for the costs and fees. Mr. Sheehan, The Christic Institute's General
Counsel, acted on behalf of the Institute. The Institute was the self-pronounced law firm representing the plaintiffs. Its attorneys carried out Mr. Sheehan's litigation strategy, and willingly participated in the litigation tactics. The Institute's name appears on all or most of the plaintiffs' filings. Moreover, because it acted through its officers, the attorneys representing the plaintiffs, the Institute must be held accountable for its agents' neglect of their continuing duty under all three authorities to avoid this frivolous lawsuit. The Christic Institute is liable for the entire award.

For like reasons, the plaintiffs, Tony Avirgan and Martha Honey, should be liable for the entire awa d. Admittedly, Honey and Avirgan cannot be liable unde. Fed. R. Civ. P. 11 or 28 U.S.C. § 1927 because they are not attorneys. Nevertheless, they were willful participants in Mr. Sheehan's litigation strategy. The Christic Institute paid them approximately $50,000.00 for consultation, public speaking, and trips from Costa Rica to the United States. See Shackley's motion for sanctions and fees, Exhibit D (Avirgan Deposition at p. 297-302; Honey Deposition at p. 211-13). The plaintiffs, therefore, are liable for the award of costs under the bad faith exception, which is, the entire award.

Because Daniel Sheehan, Esq., The Christic Institute,

and the plaintiffs are all liable for the award, they are jointly liable. Moreover, because each contributed to the actions in the defined manners, this liability is also several. Consistent with this opinion, the court

ORDERS and ADJUDGES that the award of fees and costs delineated in this court's order dated February 2, 1989 shall be paid by the plaintiffs Tony Avirgan and Martha Honey, the Christic Institute, and Daniel Sheehan, Esq. jointly and severally.

DONE and ORDERED in chambers at the United States District Courthouse, Federal Courthouse Square, Miami, Florida this 24th day of February, 1989.

JAMES LAWRENCE KING
CHIEF U.S. DISTRICT JUDGE
SOUTHERN DISTRICT OF FLORIDA

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 88-5720; 89-5143; 89-5232; 89-5515

Entered 9 September, 1991

Tony AVIRGAN et al.,
Plaintiffs-Appellants,
vs.

John HULL, et al.,
Defendants-Appellees,
Bruce Jones, et al.,
Defendants.

Tony AVIRGAN, et al.,
Plaintiffs-Appellants,
Daniel P. SHEEHAN and The Christic Institute,
Non-Party-Appellants,
vs.

John HULL, et al.,
Defendants-Appellees,
Rene Corbo, et al.,
Defendants.

On Appeal from the United States District Court for the
Southern District of Florida

ON PETITIONS FOR REHEARING AND SUGGESTIONS OF REHEARING EN BANC (Opinion June 18, 1991, 11th Cir., 1991, ____F.2d____)

Before HATCHETT and BIRCH, Circuit Judges, and RONEY, Senior Circuit Judge.

PER CURIAM:

The Petitions for Rehearing are DENIED and no member of this panel nor other Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc (Rule 35, Federal Rules of Appellate Procedure; Eleventh Circuit Rule 35-5), the Suggestions of Rehearing En Banc are DENIED.

ENTERED FOR THE COURT:

Joseph W. Hatchett
UNITED STATED CIRCUIT JUDGE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CIVIL ACTION NO. 86-1146-CIV-KING

Tony AVIRGAN, et al.,
Plaintiffs,

v.

John HULL, et al.,
Defendants.

_____/

AFFIDAVIT OF DANIEL P. SHEEHAN
IN OPPOSITION TO DEFENDANTS'
MOTIONS FOR FEES, SANCTIONS, AND
COSTS, AND IN SUPPORT OF
PLAINTIFFS' MOTIONS FOR SANCTIONS
PURSUANT TO FED. R. CIV. P. 11

Washington, DC
September 12, 1988
The Christic Institute
Daniel P. Sheehan,
General Counsel
Attorney For Plaintiffs

DISTRICT OF COLUMBIA) SS:

Daniel P. Sheehan, being duly sworn, deposes and says:

1. I am General Counsel of the Christic Institute,

attorney for the Plaintiffs in this action. I submit this affidavit in opposition to the motions by Defendants Singlaub, Shackley, Hull, Owen, Calero, Secord, Quintero, Clines, Hakim, McCoy, Dell Amico, Martin, and Nunez for Rule 11 sanctions, costs and attorneys fees, and in support of Plaintiffs' cross motion for Rule 11 sanctions against Defendant Singlaub, his attorney, Thomas Spencer, John Hull and his attorney, Edwin Smith.

2. As argued more extensively in the accompanying Memorandum of Law, and as documented in the following paragraphs, the Defendants' goal since the filing of this lawsuit has been to wage war against the Plaintiffs and the Christic Institute, win it, and then seek "reparations" in the form of fees, costs, and sanctions. In order to accomplish this goal, they have refused to comply with the Federal Rules of Civil Procedure, Court orders, threatened and intimidated Christic investigators and process servers, as well as witnesses for the Plaintiffs. Their entire discovery strategy has been geared toward discrediting the Plaintiffs and their counsel instead of responding to the substance of their filings. Defendants have waged a public relations campaign designed to smear the Institute's staff, and to precipitate the revocation of the Institute's tax exempt status. Defendants are entitled to no fees, costs, or sanctions in law or in equity.

I. At this Time The Court Should Determine Only Whether or Not Plaintiffs are Entitled to Fees and Other Relief

3. Defendants seek compensation for all their costs and legal fees pursuant to a variety of statutes and principles. The accompanying Memorandum of Law sets forth the relevant distinctions among these sources of authority, and argues that due to the lack of specificity in the Defendants' applications, even if the Court were to find

that Defendants were entitled to any fees or costs, none could be assessed until Defendants meet their burden of submitting a more precise accounting of the basis for the hourly rates sought, a more precise description of the compensable activities, and identification of the specific claim that each activity relates to as well as a more detailed accounting of the costs incurred.

4. In late August, Plaintiffs sent letters to all but one counsel for the moving Defendants seeking more precise information. (Exhibits A to G attached hereto). Only the attorneys for Singlaub, Shackley and McCoy, Martin and Dell Amico replied, and they provided no information. (Exhibit H).

I. Rule 11 Sanctions: Motion and Cross Motion

A. Defendants Are Not Entitled to Rule 11 Sanctions.

5. Defendants, in spite of their own misconduct, seek sanctions against Plaintiffs pursuant to Rule 11 of the Federal Rules of Civil Procedure. In pertinent part, Rule 11 provides as follows:

> Every pleading, motion and other paper of a party represented by an attorney shall be signed by at least one attorney of record in the attorneys individual name.... The signature of an attorney or party constitutes a certificate by the signer that the signer has read the pleading motion or other paper; that to the best of the signer's knowledge, information and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification or reversal of existing law, and that it is not interposed for any improper purpose .... if a pleading, motion or other paper is signed in violation of this

> rule, the Court ... shall impose upon the person who signed it, a represented party or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing ... including a reasonable attorneys fee.

6. The pleadings put at issue by the Defendants' motions are the Amended Complaint dated October 4, 1986, the Affidavit of Daniel P. Sheehan dated December 12, 1986, and the Declaration of Counsel, dated March 25, 1988.

7. In an order dated October 5, 1987, this Court formally ruled that, as of that date, none of Plaintiffs' motions or pleadings violated Rule 11 standards. (D. 438). Defendants have ignored this finding and persist in efforts to have the Court impose Rule 11 sanctions as to the two pleadings and papers which predate this order, the amended complaint and the December 12, 1986 Affidavit.

1. The October 4, 1988 Amended Complaint

8. On September 5, 1986, this Court granted Plaintiffs leave to file an amended complaint (D.75), and Plaintiffs did so on October 3, 1986. One Defendant, Andrew Messing, was dropped from the October amended complaint because Plaintiffs' investigations showed that his inclusion as a Defendant would require a separate, although supportable, legal theory.

9. Subsequently, nine defendants moved to dismiss the amended complaint, but their motion was denied on January 30, 1987. (D. 184). In its January order, the Court found that Plaintiffs had adequately alleged the essential elements of a RICO claim: predicate acts, a pattern of racketeering activity, and enterprise, and that the Court had personal jurisdiction over the moving Defendants. Count VI of the amended complaint (tortious interference with a

business relationship) was dismissed. (Id.).

10. Although Defendant Singlaub moves for Rule 11 sanctions as to the amended complaint, he concedes that its allegations stemmed from the investigations of the Christic Institute (Defendant Singlaub's Motion for Sanctions, Excessive Costs and/or Attorneys Fees, p. 10). Further, Singlaub is, or should be, aware of the publication entitled La Penca, which is a 36 page report written by Plaintiffs detailing their investigation of the La Penca bombing. (Exhibit I). In point of fact, prior to the filing of the complaint, I interviewed numerous witnesses, reviewed scores of government documents, and consulted books and news reports to confirm facts and identify witnesses.

11. Defendants Martin, McCoy and Dell Amico contended, although not citing specifically to Rule 11, that the "Plaintiffs never laid out a dime for the lost camera" so that the RICO claim is a sham. (Martin, McCoy and Dell Amico's Motion for Attorneys Fees and Costs and Adoption of Defendant Singlaub's Motions, p. 1) Singlaub appears to have contended the same. (Singlaub Motion for Sanctions, Excessive Costs and/or Attorneys Fees, p. 11). However, Plaintiffs or counsel are not subject to Rule 11 sanctions for this reason because they have a good faith legal basis for contending that there is a RICO injury under existing law. See accompanying Memorandum of Law.

12. Other Defendants, such as Owen (Legal Memorandum in Support of Defendant Owen's Motion for Costs and Attorneys Fees, p. 9), Hull (Motion of Defendant Hull for Sanctions, costs, Expenses and Attorneys Fees and Adoption of Co-Defendants' Motions, p. 4), Secord (Motion of Defendant Richard V. Secord for Attorneys Fees and For Sanctions, Excessive Costs and/or Attorneys Fees, p. 2), Quintero, Clines and Hakim (Motion of Defendants Rafael Quintero, Thomas Clines, and Albert Hakim and for Sanctions, Excess Costs, and/or Attorneys Fees, p. 2), Shackley (Motion of Defendant Shackley for Sanctions and

Attorneys Fees, p. 4) generally assert that there was no factual or legal support for the action, but fail to - and could never show substantively - that there was no investigation of the claims of this case. As set forth in the accompanying Memorandum of Law, they have failed to meet their burden of establishing a Rule 11 violation.

13. What is more egregious is the fact that each of the moving Defendants actively resisted discovery, and actively defied orders compelling discovery responses. They cannot now come forward and say there was no evidence.

2. The December 12, 1986 Affidavit

14. As noted above, various Defendants moved to dismiss the amended complaint, in part, on the ground that Plaintiffs failed to set out an adequate specific factual basis for allegations of racketeering activity sufficient to support a showing of probable cause. See e.g., Motion of Defendant Calero to Dismiss the Third [sic] Amended Complaint (D.107) and memorandum in support thereof. (D. 108, at 8-12). In support of his motion, Calero cited a narrow line of federal district court cases holding that such probable cause specificity was required in the pleading of a civil RICO complaint which sounded in fraud.

15. Plaintiffs, only in response to this legal assertion, then filed the December 12, 1986 Affidavit in order to demonstrate to the Court that they could make a sufficient showing of probable cause - if the Court so required. The Affidavit set forth information generated through the investigation undertaken by Plaintiffs' counsel in anticipation of filing this litigation. The Affidavit described the steps taken by counsel and their investigators to demonstrate the manner in which the Defendants were discovered to be part of a RICO enterprise. This Affidavit did not purport to be a compendium of the directly admissible, first-hand, evidence needed to convict the

Defendants, as they were to later insist it must be.

16. The Court denied Defendants' motions to dismiss, holding that probable cause specificity was only required in RICO cases which sounded in fraud. Since Plaintiffs' RICO complaint did not allege fraud, probable cause was not required. (D. 184, at 12). The Affidavit, which was specifically filed as a proffer in the event the Court required probable cause specificity, then became superfluous for the purposes of the case. The Defendants then demanded that this Court strike the December 12, 1986 Affidavit from the record as no longer pertinent. This Court refused to do so.

17. However, the Defendants immediately seized upon the Affidavit as a discovery tool and attempted to elicit the names of the unnamed investigative sources listed in the Affidavit. Many of these sources were not individuals with knowledge, first-hand or otherwise, of the activities of the defendants. Such sources were included in the document solely for background purposes. As I stated in a hearing before this court on December 22, 1987:

> What we did, is we set forth in general description the nature of the people that we had been speaking with in our preliminary investigation. (D. 586, at 9).

The Affidavit was never intended to be a witness list for trial or a list of individuals with direct knowledge of the activities of the Defendants. Litigation as to the Affidavit should have ceased at the time Defendants lost their motion to dismiss in January, 1987.

18. Indeed, the District Court of the District Columbia recognized it was inappropriate to belabor the issue of sources by quashing the subpoena to take my deposition on April 12, 1988. (Exhibit J)

19. Instead, Defendants Singlaub, Owen and Shackley now use the December 12 Affidavit as a basis for

their Rule 11 motion.

20. By a reading of both Defendant Singlaub's Motion for Attorneys Fees served July 8, 1988 and Defendant Singlaub's undated Motion for Sanctions, Excessive Costs and/or Attorneys Fees, it appears that Singlaub takes issue with an allegation in the December Affidavit that when I.W. Harper was with John Singlaub and Robert K. Brown, he went to Central America to train people to make C-4 bombs. At page 8 of the "Motion for Attorneys fees", Singlaub included an excerpt from the deposition of Gene Wheaton (Source 24) in which Wheaton denies making a particular statement in the affidavit linking Harper to Amac Galil, Singlaub refuses to include the excerpt from the redirect examination of Gene Wheaton which states that I. W. Harper had told Wheaton that when Harper was with Singlaub and Robert K. Brown, he (Harper) had gone to Central America to train people to make C-4 bombs. Wheaton Deposition dated March 8, 1988, at 1092. Wheaton also testified that when Harper was asked about the La Penca bombing he became agitated and stated that the reporters who were there probably got what they deserved, (Id. 1082), and that he (Wheaton) also recalled discussions with me regarding the meaning of Harper's statements and behavior. (Id. 1084). In further conversations with Wheaton, I recall his opining that Harper must have met with Galil.

21. Further, the deposition of Robert Owen, corroborates Wheaton's statement that Harper was working for Singlaub. (See Owen deposition dated February 28, 1988 at 196, 198, 468-469, 472, attached hereto as Exhibit K).

22. Singlaub also contends that an affidavit of Carl Jenkins demonstrates that many of the allegations contained in the Affidavit and amended complaint were not grounded in fact. (Singlaub's Motion for Sanctions..., p. 10). This Affidavit was included as Exhibit D 1 to the Renewed Motion for Summary Judgment of Defendant Shackley.

Singlaub fails to document his bald assertion that the Affidavit "clearly demonstrates that many of the allegations" contained in the affidavit were simply not grounded in fact.

23. The Affidavit of Carl Jenkins, drafted by Secord's Counsel, is carefully phrased: Jenkins does not deny the knowledge attributed to him, only that he lacks direct personal knowledge. For a more detailed discussion of the Jenkins affidavit, see paragraph 74 below.

24. Singlaub next asserts that the Affidavit of I. W. Harper further indicates the untruthfulness of the December 12 Affidavit. Essentially the Harper affidavit denies all the allegations in the Affidavit. Harper, however, does not deny that Gene Wheaton informed me that Harper had told Wheaton that Harper had trained contras in the use of C-4. It was Gene Wheaton's information which formed the good faith basis for the allegations concerning Harper. Further, Robert Owen corroborated the fact that Harper was working for Singlaub, and that his area of expertise was munitions and explosives. (Exhibit K, pp. 196, 198, 468-469, 472).

25. The next alleged violation of Rule 11 is mounted by both Singlaub and Owen. They contend that the names of some of the sources for allegations contained in the Affidavit were unknown. (Legal Memorandum in Support of Defendant Owen's Motion for Costs and Attorneys Fees, p. 8; Affidavit of Thomas R. Spencer ... pp. 3, 4, 7).

26. This point was unsuccessfully argued by Defendants on two prior occasions: the December 22, 1987 hearing before this Court and the March 18, 1988 hearing before Magistrate Turnoff.

27. No authority is cited to show that not having a present record of names of sources is a violation of Rule 11; no facts are cited to show that the information is inaccurate; and no showing is made of any injury to Defendant Singlaub stemming from those allegations. As was stated to the Court, these "investigative sources" merely

directed counsel to information which, in turn, led counsel to the sources who possessed information incriminating the Defendants. Those latter sources are named.

28. Singlaub also contends that Brian Barger refused to confirm the veracity of statements attributed to him. This is incorrect. (Spencer Affidavit, p. 4). Barger only stated that I had not attributed to him any allegations against Defendant Shackley, and that with regard to other matters, he would invoke a First Amendment privilege and refuse to reveal the sources of his information. (Exhibit L). Barger's letter also notes that errors in statements I attributed to him were corrected in a revised Affidavit.

29. The Affidavit of Thomas Spencer next contends at p. 4 that Michael Barger Hirsch claimed at his deposition that he was not a source for statements attributed to him in the December 12 Affidavit.

30. It is essential to note that the Hirsch deposition was taken with insufficient notice to Plaintiffs. They had no opportunity to object to the form of questions put to the witness, and no opportunity to cross examine. (Exhibit M). The deposition should not therefore be considered by the Court. This is a particularly important consideration because at the deposition Hirsch was asked whether or not he had given me any information regarding national security planning for which he might be reprimanded. Had Plaintiffs received proper notice and been able to attend the deposition, they would have established on the record that Hirsch had a motive to deny. In addition, Plaintiffs would have had the opportunity to question Hirsch about the fact that when I described to Hirsch certain details of Rex 84, he looked shocked and stated, "How did you find that out?" The reasonable inference from this statement is that the information was accurate.

31. Finally, the statement attributed to Hirsch in the December Affidavit did not relate to Defendant Singlaub in any way and it was what Hirsch said to me.

32. The Spencer Affidavit contends at p. 4 that Jack Terrell "refused to confirm" the veracity of the statements reported to have been made to me in the December Affidavit. What happened was simply that at his deposition, Jack Terrell invoked the Fifth Amendment in response to such questions as whether he knew General Singlaub (p. 31), and whether he met Thomas Posey, as stated in the December 12 Affidavit. (p. 24). Moreover, Terrell had made sworn statements in Court in Costa Rica containing some of this information.

33. Spencer next contends at p. 5 of his affidavit that the December Affidavit alleges that the La Penca bombing was planned by John Hull and others supplied with C-4 explosives by Defendants Tom Posey, John Hull and Bruce Jones, but that evidence submitted to Court proves that there was no such evidence. The Court's adverse ruling on a summary judgment motion does not demonstrate that allegations made in a prior pleading were not made in good faith. It should be noted in this connection that one issue raised by Plaintiffs on appeal is that the Court decided the summary judgment motions based entirely on issues not raised by Defendants, and as to which Plaintiffs were not given the opportunity to submit the evidence available to them on those issues.

34. At page 5 of the Spencer Affidavit, he asserts that facts attributed to Plaintiffs in paragraph 42 of the December Affidavit are untrue. The fact is that the facts alleged in paragraph 42 are attributed to Plaintiffs and sources who were in direct contact with them. (Emphasis added.)

35. Plaintiffs' source David is said not properly to be a "source" because I never personally interviewed him, (Spencer Affidavit, p. 6). The December Affidavit fully discloses all that is known of David's identity and how information was obtained from him. The Affidavit does not state that I interviewed David. Spencer also argues that a

telephone conversations with a source, such as the telephone conversation Plaintiffs had with David is insufficient to "confirm" a source's existence or his name. There is no reference to this esoteric point in his legal memorandum. Further, as is clear from the La Penca Report (Exhibit I), Carlos had several face to face meetings with David and communicated information obtained at those meetings to Plaintiffs. Carlos also testified to these meetings in his deposition.

36. Mr. Spencer uses excerpts from an uncertified translation of an interview of Harry Barrantes, an acknowledged liar[1], to contend that facts attributed to Barrantes in the Affidavit, are "unsubstantiated" by him.

37. The Spencer affidavit contends, at p. 8, that sources, including Eden Pastora have more than one number. He fails to explain why this is violative of Rule 11.

38. Spencer asserts, but does not demonstrate, that paragraphs 59 and 60 conflict with paragraphs 40 and 41.

39. With regard to the contention in the Spencer affidavit (p. 8) that Paul Hoven denied statements attributed to him, a review of the Hoven Affidavit reveals that, in actuality, Hoven denies statements attributed by the Plaintiffs to Gene Wheaton. Hoven does not deny having introduced me to Gene Wheaton or any of the other facts attributed to him in the Affidavit.

40. Spencer next complains that Gene Wheaton, a professional criminal investigator for the U. S. Military, was described in the Affidavit as a US intelligence officer. (Affidavit, p. 8). Again Spencer does not explain how such

---

[1]. Paragraph "6" of the first page of Exhibit "G" to the Spencer affidavit, reads in part: "Barrantes told the Avirgans that Rojas was being secretly protected by his people after they asked for help in protecting Rojas. In reality, Barrantes never called in for help ...."

a minor error in job title violates Rule 11.

41. Further, it is contended that Wheaton had no first hand knowledge but that the Affidavit clearly represents that it is based on first hand knowledge. (Spencer Affidavit, p. 9). The Spencer affidavit fails to point to any paragraphs which contain false representations of first hand knowledge. In fact, Mr. Wheaton did have first hand knowledge of the Contra resupply effort from his direct contact with Vaughn Forrest, another deponent.

42. It is next asserted that one General Brett never talked to me. This is true. General Brett gave information to Gene Wheaton which was communicated to me through Gene Wheaton. This does not mean that General Brett was not a "source" of information as indicated in Counsel's affidavit.

43. Mr. Spencer next claims that Source 53 never confirmed facts attributed to him in paragraph 63 of the December Affidavit, and that I set up a process that resulted in the revelation of the CIA affiliation of this man, imperiling his life. This statement is unconscionable. First, the December Affidavit does not specify which facts were confirmed by Source 53. Ferguson only denies that he has knowledge of the activities of Shackley, while paragraph 63 concerned both Shackley and Clines. The December Affidavit stated clearly that this source was an active agent of the CIA. His identity was revealed solely because Defendants pressed their claim to compel Plaintiffs to identify this source. To now contend that this revelation is actionable by them indicates the intensity of their motivation to seek a means of punishing counsel for saving them.

44. Sources 55, 56, and 57, although they made no statements to me, were nevertheless "sources" of information conveyed to me.

45. Sources 61 and 62 did provide information to me as described.

46. Sources 63 and 64 were never interviewed by

me, but were interviewed by others who conveyed the information to me.

47. It is contended that sources 48, 49, 67, 68, 70 and 71 did not provide first hand knowledge of allegations against Defendants. (Spencer Affidavit, p. 12). The December Affidavit did not state that these sources did provide first hand information against the Defendants.

48. The key conceptual point is that Mr. Spencer continues to try to pretend that the December Affidavit was submitted to prove the case in chief, and argues that admissible proof of alleged criminal acts is not provided by these sources, therefore subjecting counsel to sanctions. (Spencer Affidavit, p. 12). However, at the same time, Spencer fails to demonstrate that any fact asserted is untrue. Instead, he merely submits affidavits from people who are alleged to have committed criminal acts in which the affiants deny the crimes.

49. An affidavit of Douglas Schlachter is attached to the Spencer Affidavit as Exhibit M, and in the affidavit Schlachter states that he has never spoken with me. That is correct. I obtained the information attributed to Mr. Schlachter from and FBI 302 report, a copy of which is annexed hereto as Exhibit N. However, Mr. Schlachter is properly the "source" of the substantive information at issue.

50. Spencer then states that neither Source 73 (Christine Simmons) nor 74 (Rep. Wilson) were interviewed by me. He states that Steven Carr is dead and that Carr did not attest to facts attributed to him during his life. Simmons and Wilson were "sources" of information and were named by Schlachter in the FBI 302. And, Carr was alive on December 12, 1986 and did make the statements attributed to him.

51. It is next contended that the facts in paragraph 71 are unsupported by Sources 49 and 50. (Spencer Affidavit, p. 13)

These persons did support the information contained in

paragraph 71, although they did not proffer first hand knowledge of it.

52. Finally Mr. Spencer states that Eden Pastora, Cruz, and Angel Edmundo Solano had no facts concerning any Defendant other than Hull. (Spencer Affidavit p. 13). First Mr. Spencer is wrong. He has obviously failed to read the deposition of Eden Pastora. Second, his contentions are irrelevant because the Affidavit was submitted to the Court before discovery began in this case in connection with a very narrow issue: pleading requirements under RICO.

3. The March 25, 1988 Declaration

53. Defendants Owen and Calero charge that the Declaration of Counsel dated March 25, 1988 (D. 661) violates Rule 11. (Calero's Motion for Attorneys Fees and Costs and Adoption of Co-Defendants' Motions, pp. 2,3; Owen, Legal Memorandum, p. 9) The Declaration is a 300 page document which contains over 1000 footnotes citing sources and authorities. As this Court is aware, that Declaration was submitted in support of Plaintiffs' Motion to Lift the Temporary Restrictions on Discovery restrictions established by this Court in its order dated July 30, 1987, and in support of Plaintiffs' Motion to Amend the Complaint. (D.369). This Court's order directed that Plaintiffs "establish" the claims which are alleged to have arisen during the time period from December, 1982 through November, 1986 in order to be permitted discovery in the case of activities which pre-dated December 1982.

54. Calero singles out two paragraphs in the Declaration and contends that Plaintiffs have no evidence to support these. However, good faith is the operative standard and not in hand possession of directly admissible evidence. Indeed Calero has been specifically requested for documents responsive to Plaintiffs' April, 1987 Document Request on the ground that they would be essential to defense of his

motion for Rule 11 sanctions against Plaintiffs. (Exhibit O). He refused to provide those documents.

55. Defendant Owen also misconstrues Rule 11 standards by contending that sanctions should be imposed against Plaintiffs stemming from the Declaration because Plaintiffs did not submit "admissible" evidence to support each contention. For such an argument, he and his counsel are subject to imposition of Rule 11 sanctions themselves.

B. Plaintiffs Cross Motion for Rule 11 Sanctions Against John Singlaub and his Attorney, Thomas Spencer, and Against John Hull and his Attorney, Edwin Smith, Should Be Granted.

56. It is apparent from the foregoing that Defendants' counsel, particularly Thomas Spencer, are themselves subject to Rule 11 sanctions, based on their submissions in support of fees, costs and sanctions.

1. John Singlaub and Thomas Spencer

57. Spencer admits that the lawsuit was the result of an investigation by the Christic Institute. (Motion for Attorneys Fees, p. 7; Motion for Sanctions, p. 10).

58. Spencer cites as proof of the inaccuracy of the December 12 Affidavit Gene Wheaton's denial of a quote from the Affidavit. (Motion for Sanctions, p. 10). But Spencer fails to disclose that on redirect examination of Gene Wheaton, Wheaton conceded the accuracy of the facts contained in that section of the Affidavit. (See paragraph 20 above.) This failure to disclose to the Court his knowledge of the contents of the deposition transcript constitutes a direct violation of Rule 11. Mr. Spencer was present at the deposition, and is fully aware of his effort to deceive the Court.

59. Spencer claims that the Jenkins affidavit

proves the inaccuracy of the December Affidavit. (Motion for Sanctions, p. 10). However, Spencer conceals from the Court the portions of the Jenkins deposition in which Jenkins conceded the truthfulness of statements contained in the December affidavit. Spencer also conceals from the Court portions of the Wheaton deposition in which Wheaton stated that, in Wheaton's presence, Jenkins confirmed certain facts to me which Jenkins "did not recall" saying to me. Tom Spencer was present at the Wheaton deposition when this was revealed to him. (See also paragraph 74 below).

60. It was totally inappropriate for Spencer to insist upon spending so much of his time litigating the "Rex 84 allegations" (Spencer Affidavit, p. 4) because they did not concern his client in any way. The fact that Spencer chose to take, and short-notice the deposition of Michael Barger Hirsch demonstrates, for example, that his goal was to obtain material for a Rule 11 motion - not to obtain evidence for his case.

61. Spencer contends, without merit that he is entitled to fees and sanctions because Plaintiffs are without standing since Avirgan's camera was insured. This issue is discussed in more detail in the accompanying Memorandum of Law.

62. The motion of Singlaub, brought by his attorney Spencer, has, at base, a prohibited purpose. The conduct of the defense of this case has been geared solely toward an attack upon and the imposition of sanctions against Plaintiffs' counsel and Plaintiffs themselves. Imposition of sanctions against either Plaintiffs or their counsel is unwarranted. Sanctions against Singlaub and Spencer are warranted, and should be granted.

63. If the Court should award Plaintiffs attorneys fees as opposed to a monetary fine in light of Defendants' Rule 11 violation, Plaintiffs seek leave to submit, within 15 days of any such order, an accounting of fees and costs necessitated by defense against this motion.

2. John Hull and Edwin Smith

64. Rule 11 sanctions should also be imposed against John Hull and his attorney, Edwin Smith. In the Motions of Defendant John Hull for Sanctions, Costs, Expenses and Attorney Fees and Adoption of Co-Defendants Motions, p. 6, Edwin Smith, counsel for John Hull, argues that he should be awarded costs under 28 U.S.C. 1919. This section allows awards of costs only where an action is dismissed as a matter of law. This action was not dismissed as a matter of law, and therefore this provision is inapplicable.

65. Plaintiffs seek a fine of $1,000 on each individual for the above violations of Rule 11. By the letter dated November 16, 1987, (attached hereto as Exhibit BB), Mr. Smith has directly demonstrated his contempt for this Court and is not entitled to any presumed "benefit of doubt" with respect to this cross motion.

III. Defendants' Claims pursuant to 28 U.S.C. 1927 Are Unwarranted.

66. Defendants also move pursuant to 28 U.S.C. 1927 which states in pertinent part:

> Any attorney ... who so multiplies the proceedings in any case unreasonably and vexatiously may be required by the Court to satisfy personally the excess costs, expenses and attorneys fees reasonably incurred because of such conduct.

67. Defendant Singlaub makes five claims of "multiplication", and Defendant Shackley makes two. All are meritless.

68. First, Singlaub contends that the size alone of the docket sheet shows that Plaintiffs multiplied the proceedings. Singlaub failed to specify which motions and

other papers and proceedings reflected on the docket sheet multiplied the pleadings. This per se argument is transparently without merit.

69. Second, Singlaub contends that Plaintiffs obstructed discovery by failing to reveal their sources. However, at a hearing held before the Honorable William C. Turnoff which I attended on March 18, 1988, Magistrate Turnoff specifically found no bad faith in Plaintiffs' resistance to divulging to Defendants the identities of certain their sources. (Exhibit OO). Plaintiffs have ordered the transcript of that hearing and seek leave of this Court to submit the transcript, upon its completion, in support of their response to Defendants' motions.

70. Third, Singlaub contends that the filing of the Declaration of Counsel on March 25, 1988 was unreasonable. Singlaub ignores the fact that the Declaration was filed in direct response to a specific requirement in this Court's order of July 30, 1987 that Plaintiffs establish their claims against Defendants prior to being permitted pre-1983 discovery or discovery outside of certain restricted subject matter areas between 1983 and 1986. (D. 369).

71. Fourth, Singlaub asserts that fund raising efforts by the Christic Institute were violative of the law as well as the publicity stemming from the case. Singlaub refused to mention that by order, dated November 27, 1987, this Court granted Singlaub's own motion for clarification and ruled that Local Rule 27A(7) was inapplicable to this case. (D. 519).

72. Fifth, Singlaub argues that an alleged oral statement made by one person employed by the Christic institute for a short period of time is violative of 28 U.S.C. 1927. As set forth in the accompanying affidavit of Sheila O'Donnell, Director of Investigations for the Christic Institute, the statement of the former employee, even if made, was not authorized by the Christic Institute, and was undertaken in direct contradiction to the specific instructions

given to him and was the subject of his leaving his employment at the Institute. (Exhibit P.)

73. Defendant Shackley contends that Plaintiffs' Counsel should be sanctioned because the lawsuit, which he says should have been only a personal injury claim, was used as a private Contragate investigation. The fact that the complaint was filed six full months prior to the Contragate scandal totally undercuts Shackley's argument. Further, Shackley, has ignored the finding by this Court that the RICO claim is the central claim of the lawsuit. (D. 184, p.14). Moreover, pursuant to the authority set forth in 18 U.S.C. 1964 (c), counsel for Plaintiffs assumed, to the extent possible, the role of private attorneys general in their conduct of the lawsuit. Notably, Shackley fails to demonstrate how Plaintiffs' attempts to investigate the facts of this case multiplied its proceedings in light of the Court authorized issues in the case. (See January 30, 1987 Order Denying Shackley's Motion To Dismiss.) (D. 184). Indeed, he simultaneously contends that the lawsuit lacked adequate investigative factual information and that the discovery investigation was improper.

74. Shackley next attaches the affidavit of Carl Jenkins, which falsely quotes me. I never made such a statement to Carl Jenkins or anyone else. Further, a review of the depositions of Carl Jenkins and Gene Wheaton, both of which are being filed with the Court in connection with Plaintiffs' opposition to Defendants' instant motions, is instructive:

> Jenkins was motivated to recant his statements to me because his business fell off after his associates realized that he had reported the secret dealings of some of his colleagues. (Deposition of Carl Jenkins, dated March 15, 1987 and filed with this Court on September 9, 1988, p. 330-331).

Jenkins testified that he told me that Quintero and Edwin Wilson and possibly others had tried to put together a support package for Somoza before he fell. (Id. 317-18). He also testified that Secord and Clines were supplying the Contras (Id. 134), and that he had the impression that Quintero worked for Clines. (Id. 123).

Gene Wheaton testified that he overheard Jenkins talking to Quintero on the phone regarding weapons shipments by Secord, Hakim and Quintero. (Deposition of Gene Wheaton dated March 1, 1988, p. 123).

Wheaton also testified that at a meeting with Wheaton, myself and a CIA official, Jenkins confirmed to the official the truth of Wheaton's statements about arms shipments by an enterprise involving the defendants. (Id. 332).

Wheaton heard Jenkins confirm to me that Shackley, Clines, Secord, and Hakim first began supplying explosives to the contras in 1979, and later in 1983 and 1984, shipments included C-4. (Id. 894).

Wheaton also testified that Jenkins told him that he was getting close to "black" operations affecting national security, and to back off. (Id. 341).

75. In sum, neither Shackley nor Singlaub has demonstrated any violation of 28 U.S.C. 1927. Neither they nor the other Defendants who have joined in the motions for costs of Shackley and Singlaub should be awarded any costs pursuant to this section.

IV. Defendants Are Not Entitled to Fees Pursuant to the

Bad Faith Exception to the American Rule.

76. The Court has inherent equitable power to award attorneys fees to the prevailing party when the losing party has acted in bad faith, vexatiously, wantonly, or for oppressive reasons. Both Singlaub and Shackley move pursuant to this theory, and the other Defendants join in the claims and contentions of these Defendants.

A. Defendants Come to Court with Unclean Hands.

77. Defendants should be barred from any relief pursuant to the equitable power of this Court because, as illustrated in the succeeding paragraphs, they come to Court with unclean hands and are therefore not entitled to relief.

1. John Singlaub

78. Defendant Singlaub is not entitled to equitable relief from this Court. Since December 1987, he, his attorney and their organizations and supporters have mocked and derided this Court, misrepresented to the public their legal strategy and actions in the hope of raising money, red-baited and harassed Plaintiffs and their counsel, and by their rhetoric, particularly that of Singlaub, have appealed to the very worst anti-democratic impulses of their supporters.

79. In December 1987, a full page fund raising appeal appeared in Soldier of Fortune Magazine. (Exhibit Q). The ad was a letter from John Singlaub, who was seeking to fill the "warchest" of his organization, the United States Council for World Freedom. Singlaub's letter stated in part:

> I have been in many battles and faced many enemies, but never as I'm fighting now, with an empty gun and the hordes coming over the wall....

> If I were back in Vietnam in a firefight, then I'd ask for an airstrike to blow the bastards away. But to win this fight we need money. To fight the damned Christic Institute lawsuit takes money....

80. On November 7, 1987, Singlaub approved the establishment of a legal defense fund "designed to expose a 'cynical patchwork of deception' by the Left wing Christic Institute ...". (Exhibit R). In December, 1987, Singlaub announced an intention to file a "countersuit" against Plaintiffs, and formed another fund raising organization, "The Friends of John Singlaub" to raise $450,000 to $500,000. (Exhibit S).

81. To achieve its purposes, the "Friends" circulated a white paper entitled "The Christic Institute vs General John K. Singlaub: A Case Study in Character Assassination" (Exhibit T) in which, inter alia, the Christic Institute is compared to the Red Guards, and a consultant, who worked with the Institute on one occasion on an unpaid basis, is compared to Joseph Goebbels.

82. In another appeal, the General solicited funds for organization entitled the "General John K. Singlaub Defense Fund" stating, inter alia, "We want to show them [the Christic Institute] that even in our weak, wimpy, bizarre legal system, they cannot win." (Exhibit U).

83. Concurrently the "Singlaub Freedom Foundation" published "They Want to Kill Singlaub! A Study of the Movement by the Radical Left, The Christic Institute and Communist Groups to murder the person and character of a true American Hero". The "Study" concludes with an admonition to "remember the words of Adolf Hitler" and includes two quotations from Adolf Hitler, the last being:

> When I wage war ... in the midst of peace, troops

> will suddenly appear... They will march through the streets in broad daylight. They will march to the headquarters of the General Staff...Within a few minutes France Poland, Austria, Czechoslovakia, will be robbed of their leading men .. The confusion will be beyond belief. But I shall long have had relations with the men who will form a new government -- a government to suit me. (emphasis added).

(Exhibit V).

84. Singlaub's attorney then sent a letter soliciting funds for the legal fees of his client, payable to the very same "Singlaub Freedom Foundation". (Exhibit W). Among other items, Mr. Spencer states in two separate paragraphs of his fund raising letter that he is continually forced to fly witnesses in for depositions. I took many of the depositions in this case, and received reports of and reviewed the transcripts of other. There is no record of witnesses accompanying Mr. Spencer to the scores of depositions taken by Plaintiffs, and Defendants, as is well known, took very few depositions, and upon information and belief, did not fly in witnesses for their half dozen depositions. Nor, based on his responses to Plaintiffs' discovery requests did he take any polygraphs as alleged in the fund raising letter.

85. On June 16, 1988, a front page story in the Atlanta Constitution reported that John Singlaub and his attorney, Thomas Spencer, had recently met with conservative activists along with Jim Warner, a Senior Policy Analyst for Domestic Issues at the White House, in the wine cellar of a private club in Georgetown, Washington, DC to plot a strategy against the Christic Institute. Mr. Warner suggested that Martha Honey should be accused of abetting in the torture of American POW's in Vietnam during the Vietnam War, although he knew the allegation to be false. (Exhibit X).

86. Following issuance of the opinion by this Court on June 23, 1988, the Friends of General Singlaub went back into action. Law firms which had been assisting the Christic Institute on a pro bono basis received derisive mailings such as the one annexed hereto as Exhibit Y. At least two mailings contained excerpts from the above referenced "Study" containing the Hitler quotations.

87. On July 14, 1988, Tom Spencer issued a press release announcing, falsely, that he had filed a counter-suit against Christic on behalf of Singlaub. When a representative from the Christic Institute inquired about the alleged countersuit, he was informed that the release actually referred to the July 12, 1988 motion for fees before this Court. When asked why the inaccurate information was being promoted to the press, a spokesperson from the public relations firm which issued the press release with Mr. Spencer's approval said, "Mr. Spencer approved the wording of the press release."

88. Next, Defendant Singlaub called for August 2, 1988, a meeting in Washington, DC of a new organization known as the Victims of the Christic Institute. (Exhibit Z). The meeting's agenda, as stated on the published invitation, included a discussion of "what to do if the 11th U.S. District Court of Appeals in Atlanta decides to hear the Christic's civil lawsuit." Tom Spencer was to outline a "counter suit" strategy," even though his office had earlier acknowledged that there was no countersuit, merely a motion for fees.

89. Mr. Spencer has repeatedly contended that he and others associated with Defendant Singlaub have received threats, and blames these threats on the Christic Institute and Plaintiffs. I categorically deny that Plaintiffs or Christic Institute have been responsible for any threats. We have repeatedly asked Mr. Spencer and others who make such accusations to state the basis for their belief that any such threats are being made or that the Plaintiffs or their attorneys have anything to do with them. We have never

received replies to these requests. Mr. Spencer has also contended that his office is monitored by "sophisticated electronic equipment". This is preposterous, and Mr. Spencer knows that there is no support for this contention.

2. Theodore Shackley

90. Theodore Shackley also comes to Court with unclean hands. Not only did he resist every discovery effort of Plaintiffs and defy this Court's own discovery orders, he is now engaged in a public campaign to divest the Christic Institute of its tax exempt status. (Exhibit AA).

91. On January 4, 1988, after he had been ordered by the Court to do so on two prior occasions, Shackley produced three documents responsive to Plaintiffs' April 1, 1987 Document Request. He contended in his January response that the rest of the documents responsive to Plaintiffs' requests were subject to the attorney-client privilege. Despite Plaintiffs' request to do so, he never identified the allegedly privileged documents more fully to enable the Court to determine whether the documents were in fact privileged. Shackley just said no.

92. In effect Shackley never answered Plaintiffs' interrogatories either. Plaintiffs' motion to compel production of the remaining documents and answers to interrogatories was granted May 11, 1988. (D. 900). Shackley again said no, and moved for reconsideration. (D. 907). The merits of his motion were never decided prior to granting Shackley summary judgment. (D. 916). After deliberately withholding his evidence from Plaintiffs, Shackley now moves for fees on the ground that Plaintiffs' lawsuit lacks supportive admissible proof.

93. Not satisfied with flaunting the federal rules governing discovery and ignoring this Court's orders in order to win judgment, Shackley now exhorts others to seek removal of the Christic Institute's tax exempt status. (Exhibit

AA). He is not entitled to be heard by this Court.

3. John Hull

94. John Hull also said no. On May 11, 1988, he walked out of his deposition (D. 927), and refused to return. Plaintiffs received chiefly unsolicited documents in response to their April 1, 1987 Document Request. They made two successful motions to compel (D. 541 and 900), but still received no documents and only perfunctory responses to their interrogatories.

95. Hull's attorney, Edwin Smith, who seeks compensation from this Court, expressly recommended a non - compliant approach to discovery responses, and that is undoubtedly why Hull did not feel constrained to comply with Plaintiffs' requests. In a letter to his client dated November 16, 1987, which was forwarded by mail to the Christic Institute, Mr. Smith advises his client concerning responses to Plaintiffs' April, 1987 Document Request:

> The enclosed documents are selfexplanatory (sic). Someplace along the line you are going to have to respond or else be subject to Court imposed penalties. I have no idea as to what the Court would do as a result of your noncompliance. I would suggest that if you don't have the requested documents then simply say that you don't. If you need to discuss how to answer some of these "requests", please contact me, and I'll advise accordingly. I suspect that if you provide some reasonable response and an explanation as to why you cannot provide the information requested, the Judge might be satisfied. From his standpoint, he has to maintain the "authority" of the Courts and to completely ignore this request might constitute an afront (sic) to the "dignity of the Court system"....

(Exhibit BB).

96. By his dishonesty, and disrespect for democratic institutions, and this Court, John Hull is not entitled to equitable relief from this Court.

97. In October, 1985, John Hull filed a libel suit in Costa Rica against Plaintiffs alleging, inter alia, that in their La Penca Report (Exhibit I), Plaintiffs had stated that he worked for the CIA and received money from the National Security Council. Hull presented no evidence other than the La Penca Report, called only one witness and refused to take the stand himself. He lost.

98. A little over a year after his defeat in the libel action, Hull admitted in a newspaper interview that he received monthly CIA payments. (Exhibit CC).

99. In a PBS Frontline documentary produced by Charles Stuart entitled "Murder on the Rio San Juan" Hull stated:

> I'm not an assassin... but if it were within my power, people like (U.S. Senators) Kennedy and Kerry would be lined up and shot tomorrow at sunrise.

100. John Hull has also been the subject of a congressional inquiry into a missing loan from the Federal Overseas Private Investment Corporation (OPIC) loan of several hundred thousand dollars. (Exhibit DD).

101. On two occasions, Plaintiffs' counsel warned Mr. Smith, Hull's lawyer that John Hull had been instrumental in intimidating witnesses and investigators from the Christic Institute. Mr. Smith never denied these facts, and never indicated that he had admonished Mr. Hull. (Exhibits EE, FF, GG).

4. Robert Owen

102. Nor is Robert Owen entitled to equitable relief from this Court.

103. As suggested at p. 648 of the Report of the Congressional Committees Investigating the Iran - Contra Affair, Robert Owen, along with Oliver North, improperly used the United States Custom Service to further their defense of this action. Specifically, Owen illegally and improperly obtained tape recordings made by one Joseph Kelso during the course of an official investigation. (Exhibit HH). He obtained these tapes because he had a belief that there might have been some information about the Plaintiffs' case on these tapes. (Exhibit K, p. 39). Robert Owen destroyed these tapes in October, 1986 after the filing of the amended complaint herein. (Id. p. 6.) (See also Exhibit K, pp. 5, 7-9, 25-31, 34, 36-41, 46, 47, 50-52, 61, 63).

104. Owen withheld production of documents until late June 1988, but he failed to produce, and had no reason for failing to produce, one of the most essential documents in the case: a memorandum dated June 11, 1984 to Oliver North, describing his trip to Costa Rica, a trip which coincided with the La Penca bombing.

5. Rafael Quintero, Albert Hakim and Thomas Clines

105. By motion dated August 5, 1987, Defendants Quintero, Clines and Hakim attempted to stay all discovery in this case until criminal proceedings were terminated. Although their motion was denied October 5, 1987 (D. 441), these Defendants successfully blocked all discovery on Fifth Amendment grounds.(D. 634, 1007, 1122).

106. On less than 24 hours notice Quintero moved to quash his deposition noticed for March 30, 1988 on the ground that he intended to take the Fifth Amendment. He did not attend the deposition. After the Court ordered him to appear for his deposition at a later

date, he did so, but invoked the Fifth Amendment as to virtually all questions. (D. 1099).

107. Defendant Hakim took the Fifth Amendment as to all questions asked him at his deposition, including whether or not he was a United States citizen, and walked out after approximately 45 minutes. (D. 978).

108. On March 24, 1988, Defendant Hakim was arraigned in the United States District Court for the District of Columbia (Criminal 88 - 80) on counts including conspiracy and wire fraud in connection with the factual activity attributed to him in this civil case.

6. Richard Secord

109. On March 24, 1988, Defendant Secord was arraigned in the United States District Court for the District of Columbia (Criminal 88 - 80) on counts of conspiracy and wire fraud in connection with the factual activity attributed to him in this civil case.

110. On April 25, 1988, the date of his renoticed deposition Richard Secord invoked the Fifth Amendment in response to many questions and then walked out of his deposition. On May 16, 1988, this Court compelled him to appear for a deposition in Miami on May 16, 1988. The deposition was continued at his request until June 21, 1988 which was after the submission of Plaintiffs' responses to Secord's motion for summary judgment.

111. In an interview with the FBI on July 23, 1986 Defendant Secord disclosed that in May 1986, he had hired Glenn Robinette to investigate the Plaintiffs and myself, and that Robinette could offer the FBI complete background information concerning his investigation. (Exhibit II).

112. A report of an FBI investigation from the Washington Field Office dated July 24, 1986, indicated that David MacMichael, an employee of Christic Institute was

under surveillance. (Exhibit JJ).

113. Further, Richard Secord has destroyed documents related to the subject matter of this case. In November 1986 documents were shredded at the offices of Secord's company, Stanford Technology Trading Group International. Included among the destroyed documents are steno books, telephone logs, and telexes. (Exhibit KK).

114. Mr. Green, Secord's attorney, has himself been the subject of subpoenas in this case because he has possession of documents related to the case which he will not produce. (D. 694, 807, 894, 900). The documents, improperly removed from the Executive Office Building in or about November 1986, by Fawn Hall and others, were placed in a car driven by Mr. Green. (Exhibit LL).

7. Adolfo Calero

115. In October, 1986, Adolfo Calero moved to disqualify Plaintiffs' Counsel because I testified before a Congressional Subcommittee on Western Hemisphere Affairs, at their request. (D. 97). That motion was denied. (D. 140).

116. Moreover, Calero has refused to turn over documents to Plaintiffs' counsel in spite of the fact that the documents had been sought in April, 1987, and were later specifically requested in connection with the defense of this motion. (Exhibit O).

8. Moises Dagoberto Nunez

117. On October 24, 1986, Mario Castro Sanchez, duly appointed by this Court to serve process (D. 2) attempted to serve process on Defendant Nunez. Once Mr Castro Sanchez handed Mr. Nunez the summons, Nunez became hostile, and began to insult Mr. Castro Sanchez, and then blocked the exit so that Castro Sanchez could not leave. Mr. Castro Sanchez was detained in Mr. Nunez' house

for approximately one hour. (Exhibit MM).

9. Mario Dell Amico

118. On August 22, 1987, William J. Davis, S. J., duly appointed by this Court to serve process (D. 7) attempted to serve process on Mario Dell Amico in this action. After refusing to accept service, he informed Father Davis that he intended to have "friends" get his passport stamped to show that he was out of the country on August 22, 1987. (Exhibit NN). Indeed Dell Amico did move to quash service (D. 412), but his motion was denied. (D. 489).

B. Defendants Are Not Entitled to Fees Based on the Bad Faith Exception.

119. With respect to the affidavit of Helen Kenney regarding statements of Richard Ryan (Singlaub Supplement to Motions for Attorneys Fees and for Sanctions, Excessive Costs and/or Attorneys Fees, p. 3, Exhibit C) the Court is respectfully referred to the annexed affidavit of Sheila O'Donnell. (Exhibit P). Richard Ryan, a former short - term employee, was never authorized to engage in the kind of conduct alleged in the Kenny affidavit. Indeed, he was forbidden to go to Florida, was ordered not to seek the location of Mr. Kenny, and was reprimanded for doing so. Mr. Ryan resigned in a meeting in which he was being terminated by Ms. O'Donnell.

120. Singlaub contends that the Witness and Exhibit lists were too large. (Singlaub Supplement, p. 4). It is true that the lists were extensive. The lists were necessitated by the fact that Plaintiffs were unable to engage in discovery for events predating December 1982, which would have permitted culling of the lists as to witnesses having knowledge of events predating 1982.

121. It is ludicrous for Singlaub to contend that

the motives for this case were pecuniary. (Singlaub Supplement, p. 5) Most employees of the Institute, including the Executive Director and General Counsel are paid an annual salary $15,750. Plaintiffs were paid their receipted out of pocket investigative expenses incurred after the filing of the case and were compensated for investigative tasks in accordance with an opinion issued by the D.C. Bar Ethics Committee Chair.

122. Finally Shackley contends that there was no direct information on him. (Shackley Motion, p. 2). This is wrong, as evidenced by the responses to his third Motion for Summary Judgment. Moreover, whatever lack of information exists on Shackley, is directly due to the fact that Shackley disregarded the federal rules governing discovery, and refused to comply with Court orders compelling discovery from him.

V. Defendants Are Not Entitled to Fees Pursuant to Florida Statute 57. 105.

123. As set forth more fully in the accompanying Memorandum of Law, in order to make an award under FSA 57.105, a Court must find a complete absence of a justiciable issue of fact or law raised by the losing party. Based on the foregoing, and in particular on the fact that in January, 1987 this Court denied Defendants' motion to dismiss the complaint, and on October 5, 1987, found that no motions or pleadings submitted up to that date had violated Rule 11, Defendants' claim pursuant to that statue should not be granted.

VI. Defendants Are Not Entitled to Fees Pursuant to Florida Statute 772.104.

124. Defendants have also failed to demonstrate that Plaintiffs raised RICO claims, pursuant to Florida RICO, that were without substantial factual or legal support.

VII. Conclusion.

125. Defendants' claims for fees, costs and sanctions should be denied. Plaintiffs' cross motions for sanctions against John Singlaub and his attorney, Thomas Spencer, and against John Hull and his attorney, Edwin Smith, should be granted.

Dated: Washington, DC
September 12, 1988

_____
DANIEL P. SHEEHAN, Esq.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CIVIL ACTION NO. 86-1146-CIV-KING

Tony AVIRGAN, et al.,
Plaintiffs,

v.

John HULL, et al.,
Defendants.
_____/

AND

CIVIL ACTION NO. 87-1545-CIV-KING

Tony AVIRGAN, et al.,
Plaintiffs,

v.

Felipe VIDAL, et al.
Defendants.
_____/

DECLARATION OF PLAINTIFFS' COUNSEL

Plaintiffs' counsel of record hereby declare as follows:

Plaintiff Tony Avirgan and his wife, Plaintiff Martha Honey, are American journalists based in Costa Rica. Plaintiff Avirgan was injured in the bombing of a press conference held by Nicaraguan contra leader Eden Pastora,

at a jungle camp in La Penca, Nicaragua on May 30, 1984. Several people were killed and many wounded. Avirgan also suffered injury in his business as a free-lance television cameraman, employed at the time by ABC Television News. All of Avirgan's equipment was destroyed by the bombing.

On May 29, 1986, Avirgan and Honey filed a lawsuit in the United States District Court for the Southern District of Florida against 29 Defendants. Plaintiffs allege that these Defendants have been members of a federal criminal racketeering enterprise that has engaged in a long-term pattern of racketeering, and that Plaintiffs' damages and injuries resulted from this activity.

The Plaintiffs' claims are made under the Racketeer Influenced and Corrupt Organizations Act, Pub. L. 91-452, Title IX, 84 Stat. 941, as amended, 18 U.S.C. 1961 - 1968 (hereafter "RICO"). Under the civil provisions of RICO, Plaintiffs' counsel, the Christic Institute, is acting as a private attorney general to remedy a serious pattern of criminal violations of a wide range of federal and state criminal racketeering laws--including political assassination, gun-running and drug trafficking--that have been undertaken by "the Enterprise" for some thirty years. The Enterprise's pattern of racketeering activity has been divided into "ventures," comprising several closely interrelated segments, each encompassing a particular time period and geographical region, including: Cuba, Southeast Asia, Iran\Libya, Nicaragua and Iran during a later period.

Thus far in this case, discovery has been restricted at the demand of the Defendants to the period between December 1982 and November 29, 1986, and to specific subject areas.[1]

---

[1]The Court has entered an order temporarily restricting Plaintiffs' discovery to the period of December 1982 to November 1986 and to the following subjects:

(1) Central America

This declaration is filed in support of Plaintiffs' motion for leave to file an amended complaint, Plaintiffs' motion to lift the above-described temporary subject matter and time period restrictions on discovery, and Plaintiffs' application for a continuance of the proposed June 29, 1988 trial date.

This court filing serves three purposes: (1) to support Plaintiffs' argument that proper and reasoned discovery must be expanded beyond the four-year time period and narrow subject areas initially imposed by the Court, by demonstrating that the pattern of racketeering activity of the Defendants in furtherance of their Enterprise is wide-ranging in scope, continuous and operative over a thirty-year period; (2) to provide specificity to the allegations set forth in the proposed amended complaint, in the event it is determined that probable cause specificity is required to support Plaintiffs' claims; and (3) to outline the evidence and potential evidence obtained to date in order to demonstrate that members of the Enterprise caused injury to the Plaintiffs through their pattern of racketeering.

Plaintiffs, by and through their counsel, have provided below a history of many, but not all, of the racketeering

---

(2) the purchase or sale of military equipment, weapons or explosives supplied or to be supplied to one of the Central American countries or to persons operating in those countries;

(3) transactions in illegal drugs, including the receipt and disposition of income therefrom;

(4) the creation and operation of the Neutrality Act enterprise alleged in the amended complaint;

(5) any actions taken by any of the defendants, including but not limited to the La Penca bombing, resulting in or causing injury to the plaintiffs.

--Order Establishing Limitations and Guidelines for Discovery, July 30, 1987.

activities of the Enterprise as recorded in a variety of public records and sworn testimony. In addition, Plaintiffs' counsel have set forth in this declaration many of the allegations against the Defendants, based on a good faith belief that such allegations are true and could be proven by a preponderance of the evidence if Plaintiffs are allotted broader discovery by the Court, and Defendants are compelled to respond in good faith to Plaintiffs' discovery requests.

As is demonstrated in the motion to lift discovery restrictions, the Defendants have been entirely unforthcoming in response to Plaintiffs' discovery requests. To allow Plaintiffs to obtain compliance with Plaintiffs' discovery demands, and to permit Plaintiffs to undertake discovery outside the temporary limitations imposed by the Court, the June trial date must of necessity be continued.

THE CUBAN VENTURE

The criminal racketeering enterprise consisting of the Defendants and other individuals can be traced to approximately 1959, the time of the revolutionary overthrow of Cuban dictator Fulgencio Batista. It is at this time that the Enterprise began paramilitary operations against Cuba, in violation of the U.S. Neutrality Act, and engaged in political assassinations and other criminal racketeering activities. This venture of the Enterprise was undertaken in conjunction with an already existing criminal operation, composed of an organized crime syndicate and U.S. Government officials, on information and belief acting in their private capacity. The goal of the Cuban venture was the overthrow of Castro's government.

Before the rise to power of the present government in Cuba and the ouster of former President Fulgencio Batista, an interstate and international criminal racketeering syndicate operated in the U.S. and Cuba. This operation, comprising

key American organized crime figures, engaged in murder, narcotics trafficking and gambling, and was headed by Meyer Lansky. Santo Trafficante, Jr., ran its Cuban operations out of Havana.[2] Trafficante forged close ties with Batista, who provided protection for the criminal activities of the organization in return for a percentage of the proceeds from the organization's gambling, narcotics and prostitution enterprises.[3]

On January 1, 1959, Fidel Castro overthrew Batista and forced those in Trafficante's organization, including many Cubans, to flee the country.[4]

Plan to Overthrow Castro is Launched

After the fall of Batista, members of the above-described criminal syndicate began discussions with then-Vice President Richard Nixon, who, on information and belief, was acting in his private capacity on a means to remove Castro from power in Cuba. Trafficante and his criminal syndicate agreed to work with Nixon and several of his associates to develop a foreign military expeditionary force, to be launched from the United States against the people and property of Cuba. This agreement was entered with the full knowledge and

---

[2]Henrik Kruger, The Great Heroin Coup (South End Press, 1980), pp. 141-152; M. Gosch and R. Hammer, The Last Testament of Lucky Luciano (Little Brown & Co., 1974), pp. 417-418.

[3]Kruger, supra, pp. 141-142.

[4]Many of these Cubans, trained by Trafficante in the business of organized crime, emigrated to the United States, with at least a quarter of a million moving to Florida, where Trafficante maintained his headquarters. Kruger, supra, p. 142.

understanding that such activity would constitute a criminal violation of the United States Neutrality Act, numerous other federal criminal statutes, as well as state statutes prohibiting murder, arson, assault and kidnapping.

After a meeting with Fidel Castro in Washington in April 1959, Nixon wrote in a memorandum that Castro was "either incredibly naive about Communism or under Communist discipline" and had to be dealt with accordingly.[5] Subsequently, in 1959, a seeret criminal operation was organized to remove Castro from power.[6] To implement this plan, expatriate Cubans were recruited and sent to one of two secret military training bases established for this purpose--one south of Miami, Florida,[7] and the other in Guatemala.[8]. These expatriate forces later became known

---

[5]Richard Nixon, Six Crises (paperback ed., 1962), pp. 416-417; William Blum, The CIA: A Forgotten History (Zed Books, Ltd., 1986), p. 216.

[6]Peter Wyden, Bay of Pigs--The Untold Story (Simon and Schuster, 1979), p. 19; Warren Hinckle and William Turner, The Fish is Red--The Story of The Secret War Against Castro (Harper & Row, 1981), pp. 45, 59-60.

[7]Wyden, supra, pp. 45, 142, 143; Hinckle and Turner, supra, p. 20. The Justice and State Departments were pressuring President Eisenhower and Vice President Nixon to move this base out of the country as it constituted a violation of the Neutrality Act. Wyden, supra, p. 45.

[8]The Guatemalan training base was named Camp Trax and was located near Retalhuleu, Guatemala. Hinckle and Turner, supra, p. 66; Wyden, supra, pp. 35,46. Other bases, used generally for more specialized training, were located in Key West and New Orleans, Wyden, supra, pp.

as the 2506 Brigade.[9] Enterprise associate Carl Jenkins was hired to supervise the paramilitary training of the force in Florida, and to recruit others to join the operation.

This criminal operation was designed to allow the expatriate Cubans to re-enter Cuba covertly and establish centers of guerrilla resistance to the Cuban government. Launched from U.S. territory, these forces would mount terrorist attacks against the economic infrastructure of Cuba, thereby disrupting the new government's economy.[10] The operation would later include a plan to assassinate Fidel Castro.[11] The goal of these criminal activities was to terrorize the civilian population of Cuba, and to convince the citizenry that the new government could neither protect them from international acts of violence nor provide an adequate economic base for the nation. Under the plan, the loss of

---

85-86, and near Phoenix, Arizona. Hinckle and Turner, supra, p. 65.

[9]Early in the Brigade's history, it was known as the Cuban Brigade. The Brigade's title was changed in honor of Number 2506, the first man to die in training at the Guatemalan base. Wyden, supra, p.51.

[10]House Select Committee on Assassinations, the Final Assassinations Report (Bantam Books, 1979) (hereafter Assassinations Report), pp. 118-119; Wyden, supra, pp. 69, 75-86.

[11]Assassinations Report, supra, p. 122; Hinckle and Turner, supra, p. 20; Report of the Select Committee to Study Governmental Operations with respect to Intelligence Activities, Alleged Assassination Plots Involving Foreign Leaders, S. Rep. No. 465, 94th Cong., 1st Sess. (1975) (hereafter Alleged Assassination Plots), p.74.

popular support for Castro would then pave the way for Batista's return to power, and for the re-establishment of Trafficante's racketeering operation in Cuba.

In January and March 1960, Vice President Richard Nixon, on information and belief acting in his private capacity, met with a number of associates to discuss the assassination of Fidel Castro, and the probable effect on Cuba of the disappearances of Fidel Castro, his brother Raul Castro and their associate, Ernesto "Che" Guevara.[12] Such so-called "5412 Committee Meetings" were, on information and belief, a guise for secret meetings between Nixon and his associates to plan this criminal operation. Those involved agreed that if the criminal operation were ever exposed publicly, it would be represented as purely the creation of Santo Trafficante and Fulgencio Batista.

To finance this operation, Richard Nixon and other members of the endeavor, on information and belief, agreed to used the color of their authority as officials of the United States Government corruptly and unlawfully, by diverting funds appropriated by the U.S. Congress for foreign intelligence gathering; commingling such unlawfully diverted funds with the income generated through the criminal activity of Trafficante's organization; and laundering these funds

---

[12]Kruger, supra, pp. 143-144, 154; Wyden, supra, p. 24-25; John Ranelagh, The Agency: The Rise and Decline of the CIA (Simon and Schuster, 1987), pp. 337, 356. As early as December 1959, steps were taken to assassinate Castro when CIA Director Allen Dulles, on information and belief acting in his private capacity as an associate of Nixon, approved a memorandum stating that consideration should be given to "the elimination of Fidel Castro." Id. at 345, 790 n. 81; Church Committee, Alleged Assassination Plots Involving Foreign Leaders (W.W. Norton, 1974), p. 92.

through foreign and domestic banks, in violation of the federal banking and currency laws of the United States.

Operation 40: Political Assassination and Terrorism

The secret "low-intensity conflict" forces of Cuban exiles, including the unit supervised by Carl Jenkins, continued their paramilitary training with the goal of overthrowing the Cuban government.[13] During this period, these units began "Operation 40," a program which involved carrying out terrorist acts against the Cuban population launched from the U.S., including murder, arson and kidnapping, all in violation of the U.S. Neutrality Act. This terrorist force had, among its missions, the assassinations of various Cuban leaders,[14] the policing of the Cuban anti-Castro movement to keep it free of more liberal anti-Castro groups, and the eventual establishment of a secret intelligence force within Cuba after the anticipated overthrow of Castro.[15]

Operation 40, in approximately 1960, was supplemented by a political assassination unit, which was formed specifically to locate and murder Fidel Castro, Raul Castro and Che Guevara. This plan was part of a broader scheme to kill foreign leaders known as "Executive Action," with the cryptonym "Z-R Rifle."[16] On information and belief, Richard Nixon, in his private capacity, determined that this political

---

[13]Hinckle and Turner, supra, pp. 40, 52.

[14]Hinckle and Turner, supra, p. 76.

[15]New York Times, January 4, 1975, p. 8; Hinckle and Turner, supra, p. 52.

[16]Ranelagh, supra, pp. 357-358; G. Robert Blakey and Richard N. Billings, The Plot to Kill the President, (Time Books, 1981), p.54; Wyden, supra, p. 110.

assassination unit would be recruited from among Trafficante's associates within Operation 40, so that any action on the part of this unit, if revealed, could be attributed to organized crime.

Toward this end, Robert Maheu, an associate of billionaire Howard Hughes,[17] on information and belief met with Nixon and his representatives between May and October of 1960, to discuss the formation of a political assassination unit. Maheu was hired to recruit organized crime members from the United States to carry out the assassinations.[18] In early September 1960, Maheu hired John Roselli, a well-known organized crime figure operating in Las Vegas and Hollywood, to develop the assassination plans. Maheu and Roselli met with Roselli's superior, Sam Giancana, a Chicago organized crime leader, and Santo Trafficante, Jr., both of whom were then enlisted to orchestrate several plans to assassinate Castro.[19] Thus, by September 1960, an assassination capacity was in place that included the joint efforts of Richard Nixon and his associates

---

[17]Wyden, supra, p.42; Hinckle and Turner, supra, p.35; Brian Freemantle, CIA (Stein & Day, 1983), p.228; Alleged Assassination Plots, supra, p.75.

[18]Wyden, supra, pp.38-42; Hinckle and Turner, p.34; Brian Freemantle, supra, p.228; Alleged Assassination Plots, supra, pp. 74-75.

[19]Wyden, supra, pp. 42-44; Hinckle and Turner, supra, p. 36-37; Freemantle, supra, p. 229-232; Alleged Assassination Plots, pp. 75-90; P. Lernoux, In Banks We Trust (Anchor Press, 1984), p. 107; Ranelagh, supra, p. 356; Blakey and Billings, supra, pp. 53-54.

and members of the criminal syndicate described above.[20]

Members of the Operation 40 assassination team included Defendants Rafael "Chi Chi" Quintero and Raul Villaverde.[21] Other members of the assassination team were: Luis Posada Carriles (aka Ramon Medina),[22] Felix Rodriguez (aka Max Gomez),[23] Frank Fiorini (aka Frank Sturgis),[24] Ricardo

---

[20]Ranelagh, supra, p. 345.

[21]Senate Select Committee on Secret Military Assistance to Iran and the Nicaraguan Opposition and House Select Committee to Investigate Covert Arms Transactions with Iran, Joint Hearings (hereafter Iran-Contra Hearings), Testimony of Felix Rodriguez, May 27, 1987, pp. 231-243. Jonathan Marshall, Peter Dale Scott & Jane Hunter, The Iran-Contra Connection (South End Press, 1987), p. 38. Raul Villaverde was also part of the Bay of Pigs assault. Wyden, supra, pp. 192, 222.

[22]Posada, arrested in Venezuela for the terrorist bombing of a Cubana Airlines Flight 455 from Trinidad to Cuba in 1976 that killed all 73 people aboard, escaped from a Venezuelan jail in 1986 and took part in illegally supplying arms to the Nicaraguan contras from Ilopango air base in El Salvador. Hinckle and Turner, supra, pp. 323, 324; Marshall, Scott and Hunter, (hereafter "Marshall"), supra, p. 37.

[23]Rodriguez, a member of the Defendant's Enterprise in many of its ventures, discussed below, became a major player in the illegal contra resupply operation. Marshall, supra, p. 130.

[24]Kruger, supra, p. 145. Frank Fiorini was one of the 1972 Watergate burglars. Ranelagh, supra, p. 389.

Chavez,[25] and Joaquin Sanjenis, who directed Operation 40 for almost ten years, until his death.[26] These Cuban exiles were placed under the supervision of E. Howard Hunt.[27]

The Operation 40 team began training in political assassination in 1960.[28] However, the low-profile, guerrilla-infiltration strategy of Operation 40 was replaced with a plan for a full-scale military invasion of Cuba, to be staged at the Bay of Pigs.[29] The Operation 40 assassination team participated in the invasion, with the intent of establishing a

---

[25]Marshall, supra, p. 38. Chavez would become involved in later ventures of the Enterprise, described below.

[26]Hinckle and Turner, supra, pp. 307-308, 310.

[27]Hinckle and Turner, pp. supra, 74-77; Kruger, supra, p.144; Wyden, supra, p. 32. Other members of the Cuban exile community who participated in the attacks on Castro and Cuba include Manuel Artime, Orlando Bosch, Felipe de Diego and Rolando Martinez. Kruger, supra, pp. 144-145.

[28]Hinckle and Turner, supra, pp. 52-55; New York Times, January 4, 1975, p. 8; Charles Ashman, The CIA-Mafia Link (Manor Books, Inc., 1975), pp.91-114.

[29]Hinckle and Turner, supra, p. 308. Defendant Hector Cornillot, another Bay of Pigs veteran, was trained in demolition techniques. Cornillot, later a member of Orlando Bosch's MIRR, a non-governmental anti-Castro group specializing in domestic bombing of businesses in Cuba, was convicted in the bombings of the Mexico Tourist Department, Air France and three businesses in Los Angeles. Marshall, supra, p.45; Hinckle and Turner, supra, pp. 317-318.

small sabotage and assassination unit in Cuba.[30]

JM/WAVE: Shackley and Clines Join the Enterprise

After the failure of the Bay of Pigs invasion in April 1961,[31] the criminal operations against Cuba were resumed, in continued violation of the U.S Neutrality Act.[32] The operations relied primarily on Operation 40 team members,

---

[30]Ranelagh, supra, pp. 358-359; Wyden, supra, 75-77; Ashman, supra, p. 112.

[31]The criminal joint venture of Operation 40 trained a special sub-unit of Operation 40, to dress in the uniforms of the Cuban military forces, go ashore into Cuba at the time of the Bay of Pigs invasion and stage a military attack upon the United States naval base at Guantanamo Bay, pretending to be a full-scale attacking force of the Castro Government. This plan was designed to deceive the officials at Guantanamo Bay into believing that they were under attack by Cuban troops so that they would request that the U.S. Marines be called in to defend them in order that President Kennedy, also being deceived, would do so, resulting in direct U.S. military assistance for the Bay of Pigs invasion, which Kennedy was otherwise reluctant to provide. However, the sub-group of Operation 40 secretly assigned to stage the fake Cuban Government attack against Guantanamo Bay utterly failed in its mission, when fearing their plan had been discovered by the Castro Government, never carried out the fake attack. Hinckle and Turner, supra, pp. 80-88.

[32]Assassination Report, supra, p. 120; Hinckle and Turner, supra, p. 110.

who carried out acts of sabotage and assassination.[33] The assassination program, re-established in November 1961, was a secret adjunct to Operation Mongoose, a broad criminal effort to overthrow Castro that was headed by Edward Lansdale. The program of raids and sabotage was operated out of an expanded Miami base called JM/WAVE, which was headquartered on the south campus of the University of Miami, using an electronics firm as a cover.[34] From this base, the paramilitary operations of the assassination team of Operation 40 were again launched against Cuba.[35]

The man who directed Operation Mongoose from the Miami base was 34-year-old Defendant Theodore G. Shackley, who was head of station at JM/WAVE from February 1962 until 1965.[36] Shackley directed approximately 300-400 Americans and 4000-6000 Cuban exile operatives in JM/WAVE operations, which included hundreds of sabotage raids inside Cuba. Shackley also directed, on information and belief in his private capacity, a range of criminal

---

[33]Hinckle and Turner, supra, p. 53; Alleged Assassination Plots, supra, pp. 142-146.

[34]Hinckle and Turner, supra, p. 113-118 and Chapter 4, generally; John Prados, Presidents' Secret Wars (Quill, paperback ed., 1986), p. 211. For an extensive discussion of Operation Mongoose, Alleged Assassination Plots, supra, pp. 139-164.

[35]Hinckle and Turner, supra, pp. 110-117; Alleged Assassination Plots, supra, pp 139-140; Thomas Powers, The Man Who Kept the Secrets: Richard Helms and the CIA, (Knopf, 1979), p. 148.

[36]Hinckle and Turner, supra, pp. 114, 135; Kruger, supra, pp. 145-146.

activities, including a series of assassination attempts against Castro.[37]

During this period, Defendant Thomas Clines worked under Defendant Shackley's direction as a case officer for Operation 40.[38] Clines directly supervised many of the Cuban exiles, including Defendant Rafael Quintero.[39] Felix Rodriguez and Defendant Raul Villaverde were also operatives on this project.[40] Another member of the Enterprise, Edwin P. Wilson, worked under Defendant Clines and met Shackley during this time.[41]

JM/WAVE, under the direction of Defendant Shackley, developed numerous infiltration teams that ran sabotage missions into Cuba, contaminating Cuban exports, sabotaging imports into the country, and executing commando raids against Cuban railroads, oil and sugar refineries and factories. JM/WAVE involved daily violations of federal and state laws,

---

[37]Kruger, supra, p. 146; Peter Maas, Manhunt, (Random House, 1986), p. 27.

[38]Marshall, supra, p. 29. For details of the assassination and criminal activities of the Miami station, Alleged Assassination Plots, pp. 139-64.

[39]Defendant Quintero was part of the advance team sent into Cuba before the Bay of Pigs invasion. His case officer at that time was Carl Jenkins. After the failed mission, Defendant Clines became Quintero's case officer. Maas, supra, p. 65.

[40]Miami Herald, October 23, 1986; Washington Post, October 24, 1986, cited in Marshall, supra, p. 28; Alleged Assassination Plots, supra, pp. 74-130.

[41]Prados, supra, p. 370.

including the U.S. Neutrality Act.[42]

JM/WAVE also focused on schemes aimed at assassinating Castro[43], devising at least 33 assassination plans.[44] Shackley ratified the ongoing activities of the assassination unit of Operation 40, and incorporated this force into Operation Mongoose. In fact, Defendant Shackley participated in physically delivering arms to members of the assassination unit with full knowledge and intent that the weapons would be used in assassinations. According to a Senate Report, Shackley helped load a truck with rifles, handguns, explosives and radios for John Roselli.[45] Defendant Clines participated in supervising these activities under Defendant Shackley. These assassination operations were beyond the scope of any lawful authorization.[46] In addition, the assassination program renewed contacts with organized crime figures, including Maheu, Giancana and

---

[42]Prados, supra, p. 211.

[43]Prados, supra, p. 212; Joan Didion, Miami (Simon and Schuster, 1987), pp. 88-89.

[44]Ranelagh, supra, p. 386. For various assassination attempts on Fidel Castro, Powers, supra, 149-152. Defendant Shackley testified before the Church Committee on May 6, 1976: "'Assassination' was part of the ambience of that time...." Final Report of the U.S. Senate Select Committee to Study Governmental Operations with respect to Intelligence Activities, Book V, p. 14, quoted in Didion, supra, p. 97.

[45]Marshall, supra, p. 35, citing Alleged Assassination Plots, supra, p. 132.

[46]Freemantle, supra, pp. 253-259.

Roselli; and Defendant Shackley maintained a close relationship with Santo Trafficante.[47]

The criminal operation also involved narcotics trafficking; and in 1963 several Mongoose participants were charged with smuggling narcotics from Cuba into the United States.[48] The continued participation of known criminals in this operation and the revelations of drug smuggling were the primary reasons that JM/WAVE was closed down in 1965.[49]

When JM/WAVE was terminated, Shackley and his staff left for Southeast Asia. Subdivisions of the criminal operation remained in Miami, consisting of a highly trained army of approximately 6000 ultra-right wing Cuban exiles, closely allied with organized crime. That association led to the formation of terrorist groups such as Alpha 66 and Omega 7, and the continued illegal trafficking of narcotics.[50]

---

[47]Alleged Assassination Plots, supra, pp. 74-130. Ranelagh, supra, p. 383; Kruger, supra, pp. 146. In the summer of 1963 a raid on Cuba took place that was financed by weapons dealer William Pawley. Besides Pawley, the crew consisted of Trafficante associate John Martino and Cuban exiles, including Rolando Martinez. There is evidence that Trafficante and Giancana helped plan the raid. Id., pp. 131, 146.

[48]New York Times, January 4, 1975, p. 8; Marshall, supra, pp. 37, 135-136.

[49]New York Times, January 4, 1975, p. 8.

[50]Kruger, supra, p. 207; Marshall, supra, pp. 125-134.

THE SOUTHEAST ASIAN VENTURE

In 1965, after Operation Mongoose was terminated, Defendants Theodore Shackley and Thomas Clines shifted to Laos, scene of a large covert war that ran from 1960 to 1973. Shackley served, in his official capacity, as the CIA's chief of station in Vientiane to gather foreign intelligence information. On information and belief in his private capacity, Shackley supervised secret criminal operations in Laos until 1969. Clines operated, in his official capacity, under Shackley's direction as the base chief in Long Tieng, in northern Laos.[51] Clines, on information and belief in his private capacity, functioned as Shackley's deputy, supervising the criminal activities of the Enterprise.

The principal activity of Shackley and Clines in Laos was to organize, fund, and direct a secret criminal army composed of Hmong (or Meo) tribesmen. This army, with bases throughout northern Laos, was directed by Shackley and Clines to fight the communist Pathet Lao insurgent forces inside Laos.

The leader of the clandestine army was a Hmong general named Vang Pao, who was also a major opium supplier in Laos.[52] Vang Pao supported General Phoumi Nosavan in the three-way civil war that broke out in 1960 between the Laotian right-wing under General Phoumi, the neutralists under former Prime Minister Souvanna Phouma, and the leftist Pathet Lao. In exchange for his support, Phoumi sent money and arms to Vang Pao. Vang Pao

---

[51]Christopher Robbins, The Ravens: The Men Who Flew in America's Secret War in Laos, (Crown Publishers, Inc. 1987), p. 125.

[52]Alfred W. McCoy, The Politics of Heroin in Southeast Asia, (Harper & Row, 1972), pp. 248-249.

was also backed by Shackley and Clines, who provided his army with air support. By 1968, Vang Pao's Hmong army grew to 40,000 soldiers, including 12,000 Thai mercenaries.[53] Vang Pao's officers and agents of Shackley and Clines flew to scattered Hmong villages offering guns, rice, and money in exchange for recruits.

The Enterprise Supports Opium Trafficking

The Hmong tribesmen were historically opium poppy farmers,[54] and with the support of the Enterprise, Vientiane, Laos became the center of the heroin trade.[55] Defendants Shackley, Clines, and Richard Secord, in order to secure support for their paramilitary operations against the Pathet Lao, on information and belief helped Vang Pao gain control of the opium trade in Laos by carrying out a selective program to suppress trafficking by Vang Pao's principal opium competitors. On information and belief, Defendant Secord not only supervised, but personally participated in dropping airborne incendiary

---

[53]John Prados, Presidents Secret Wars: CIA and Pentagon Covert Operations from World War II Through Iranscam, (Quill/William Morrow, 1986) pp. 282, 289, 293.

[54]In 1963, the Anthony Poshepny went to Laos as chief advisor to Vang Pao. Prados, supra, p. 272; McCoy, supra, p. 266. Poshepny ignored prospering heroin factories along the Mekong River, and allowed Laotian officers to use U.S.-supplied facilities to manage the drug traffic. Shackley, on information and belief, assigned Edgar "Pop" Buell, to the Plain of Jars, where he helped improve Hmong techniques for planting and cultivation opium. Id., p. 267.

[55]Kruger, supra, p. 146.

devices on the jungle caravans of Vang Pao's opium competitors from short take-off-and-landing aircraft. Secord on information and belief, also oversaw and authorized the transport of raw opium by Vang Pao's tribesmen in paramilitary aircraft from the mountain opium fields of the Hmong tribe to locations where it could be processed into morphine base, later to be processed into "China White" heroin. These operations helped Vang Pao establish monopoly control over the heroin trade in Laos.

Defendant Secord acknowledges that he "was in charge of all the tactical air operations" during the covert operations in Laos.[56] Under Secord's supervision, several hundred aircraft operated out of six bases throughout Thailand and Long Tieng, in northern Laos.[57] After the Corsican mafia's "Air Opium" charter airlines were shut down by Laotian officials in 1965, the planes under Secord's control became the only air transport available in northern Laos. Secord's planes airlifted rice, the Hmong's most important subsistence crop, to Hmong tribesmen, allowing them to increase production of their traditional cash crop--opium.[58] According to several sources, these planes flew opium from mountain villages near the Plain of Jars to Gen. Vang Pao's headquarters in Long Tieng.

---

[56]"Playboy Interview: General Richard Secord," Playboy, October, 1987.

[57]David Truong, "Running Drugs and Secret Wars," Covert Action Information Bulletin, Number 28, Summer 1987, p. 4. Under the supervision of Air Force Major Harry C. "Heinie" Aderholt, landing strips for Air America were constructed throughout the Hmong-controlled territory. McCoy, supra, p. 270.

[58]McCoy, supra, p. 283.

Hmong villagers in the area west of the Plain of Jars claim that their 1970 and 1971 opium harvests were bought up by Vang Pao's officers and flown to Long Tieng on Secord-controlled UH-1H helicopters.[59] The U.S. Drug Enforcement Agency (DEA) Far East regional chief was convinced that these planes were used to transport opium.[60]

In 1967, Shackley and Clines, on information and belief, caused Vang Pao to be given financial backing to form his own private airline, Xieng Khouang Air Transport Co., which he used to transport opium and heroin between Long Tieng and Vientiane.[61] Shackley, on information and belief also assisted in providing financial support for the construction of a Pepsi-Cola bottling plant in the Vientiane region, which was used as a front for the purchase of chemicals vital to the processing of heroin. This bottling plant, protected by General Ouane Rattikone, former commander-in-chief of the Laotian army, became one of the most active heroin factories in Laos, with South Vietnamese Air Vice-Marshal Nguyen Cao Ky purchasing large shipments and smuggling it to South Vietnam through the air force.[62]

In 1968, on information and belief, Shackley and Clines arranged a meeting in Saigon between criminal enterprise associates Santo Trafficante, Jr. and Vang Pao, in order to

---

[59]McCoy, supra, p. 263.

[60]Jonathan Kwitny, The Crimes of Patriots: A True Tale of Dope, Dirty Money, and the CIA (W.W. Norton & Company, 1987), p. 51.

[61]McCoy, supra, p. 278.

[62]McCoy, supra, pp. 186-87, 248.

set up a heroin smuggling operation from Southeast Asia to the United States. As discussed above, Shackley and Trafficante were close collaborators in Miami, in the Enterprise's low-intensity military operation against the government of Cuba. And Trafficante was in fact in Saigon in 1968.[63] On information and belief, at the meeting in Saigon, Vang Pao agreed to supply opium to Santo Trafficante, who in turn transported the illegal substance to the United States for distribution by associates of the Enterprise. Vang Pao was rewarded with a portion of the profits.

Some of the heroin produced in Laos and, on information and belief, transported by agents of Shackley, Clines and Secord, was eventually sold to American soldiers in Vietnam, resulting in addictions that remained with many of them when they returned home to the United States. Much of the heroin was exported to the U.S. market, contributing to a severe heroin addiction epidemic that spread throughout the society in the late 1960s and 1970s.

In 1970, Vang Pao opened a highly profitable heroin laboratory in Long Tieng, long-time headquarters of both Vang Pao and Shackley's and Clines' operations in northern Laos.[64]

Assassination Programs

In addition to his opium trafficking operation, Vang Pao carried out an assassination program, on information and belief under the auspices of Theodore Shackley and Thomas Clines. Partially funded by Vang Pao's opium income, the program eliminated civilian functionaries and

---

[63]McCoy, supra, p. 212.

[64]McCoy, supra, pp. 244, 281.

supporters of the Pathet Lao, as well as Vang Pao's rival opium warlords. On information and belief, Defendant Shackley brought Defendants Rafael "Chi Chi" Quintero and Rafael Villaverde, along with Felix Rodriguez, to Laos, to train members of Vang Pao's Hmong tribe to perform assassinations against Pathet Lao leaders and sympathizers.

Quintero was a trained sniper and explosives specialist for assassinations, who had operated in the Enterprise's Cuban venture and continued in Southeast Asia as well as in the later Enterprise operations.[65] Rodriguez, who had also been involved with Defendants Shackley and Clines in the Enterprise's earlier sabotage and assassination operations against Cuba, was in close contact with Defendant Secord and Donald Gregg, currently national security adviser to Vice President George Bush, in Laos during this period.[66] A CIA officer in Vietnam, speaking to a group of Green Beret officers, claimed that Theodore Shackley "had been responsible for 250 political killings in Laos."[67]

On information and belief, Defendant John Singlaub, in his private capacity, also oversaw political assassination programs in Laos, Cambodia, and Thailand. Singlaub served in his official capacity as Chief of the Military Assistance Command, Vietnam--Studies and Observation Group (MACV-SOG), between May 1966 and August

---

[65]Deposition of Milton Gene Wheaton, March 1-3, 7-8, 1988, (hereafter "Wheaton Deposition"), pp. 270-271.

[66]Steven Emerson, Secret Warriors: Inside the Covert Military Operations of the Reagan Era (G.P. Putnam's Sons, 1988), pp. 124-125.

[67]Robbins, supra, p.130.

1968.[68]

Defendant Shackley was transferred to Saigon in 1969, where he served in his official capacity as the CIA's chief of station in South Vietnam until 1972.[69] Clines joined Shackley in Saigon at this time.

Shackley and Clines directed "Operation Phoenix." in Vietnam.[70] The operation was designed to "neutralize"--to assassinate or imprison--non-combatant Vietnamese civilians known or suspected to be collaborating with the National Liberation Front (NLF), the leftist insurgency in South Vietnam. Civilian targets included South Vietnamese town mayors, clerks, teachers, business professionals, and educated persons who contributed to the actual or potential civilian infrastructure of the NLF. Under the Phoenix program, such civilians were assassinated without judicial procedure or even provision of public evidence.

In 1971, CIA Director William Colby told a Senate hearing that Operation Phoenix killed 20,587 Vietnamese suspects and imprisoned another 28,978 between August 1968 and May 1971. The South Vietnamese government itself claimed responsibility for murdering some 41,000

---

[68]Prados, supra, p. 248; Eagle Magazine, February 1984.

[69]Frank Snepp, Decent Interval: An Insider's Account of Saigon's Indecent End Told by the CIA's Chief Strategy Analyst in Vietnam (Vintage Books, 1978), pp. 12-13.

[70]Fred Branfman, "South Vietnam's Police and Prison System: The U.S. Connection," Uncloaking the CIA, Howard Frazier, ed. (The Free Press, 1978), p. 112.

Vietnamese during the same period of the program.[71] One former U.S. Phoenix agent testified to Congress that Operation Phoenix became "a sterile depersonalized murder program...It was completely indiscriminate."[72]

Operation Phoenix was declared to be a totally unlawful operation following the 1971 congressional hearings that exposed the program. However, political assassinations in Southeast Asia under the direction of Shackley and Clines continued until 1975.[73]

In 1971, Congress ordered the U.S. military to arrest and prosecute any U.S. citizen conducting assassinations in Vietnam. Following this order, one of the assassins, on information and belief, hired by Shackley, Clines, and the Enterprise, a Mr. Reaux, was arrested and charged with first degree murder by United States authorities in Vietnam.

In 1972, Defendant Shackley left Southeast Asia to become the head of the CIA's Western Hemisphere operations until the fall of 1973.[74] It is during Shackley's tenure in this position that Track II, the criminal operation to engineer a coup against Chile's popularly elected president, Salvador Allende, was conducted. Allende was murdered in September 1973, and a military coup was executed. Shackley, on information and belief acting in his private capacity, had overall responsibility for these

---

[71]Victor Marchetti and John D. Marks, The CIA and the Cult of Intelligence (Alfred A. Knopf, 1974), p. 246.

[72]Branfman, supra, p. 114.

[73]Branfman, supra, p. 119, for continuation and acceleration of Phoenix program after 1972.

[74]Robbins, supra, p. 517.

efforts.[75]

Shackley was appointed head of the CIA's East Asian Division in 1973.[76] On information and belief, between September 1973 and April 1975, the Enterprise, led by Shackley and Clines, stole thousands of tons of U.S. weapons, ammunition and explosives from South Vietnam, and unlawfully transported them to Thailand. On information and belief, Daniel C. Arnold and Jerry Barker Daniels, operating on behalf of the Enterprise, hid the stolen military hardware at the Udorn Air Force Base and other locations inside Thailand for later criminal use by the Enterprise.

NUGAN HAND AND AUSTRALIA

Between September 1973 and April 1975, Defendants Shackley, Clines, Secord and Quintero, on information and belief siphoned off a percentage of the funds derived from the opium profits of Vang Pao, that were not required for the Enterprise's assassination operations in Southeast Asia. On information and belief, they transferred this money to a secret bank account at the Nugan Hand Bank located in Sydney, Australia.

Enterprise associate Ed Wilson's former business partner Frank Terpil linked the Defendants and the Enterprise to the Nugan Hand Bank in a 1983 interview:

> The significance of Miami is the drug syndicate. That's the base. Shackley, Clines, the Villaverde

---

[75]Kruger, supra, p. 146, 151 n.30, citing T. Branch and G. Crile III, "The Kennedy Vendetta," Harper's, August, 1975.

[76]Robbins, supra, pp. 517-518.

> brothers, Chi Chi Rodriguez--[77]ail the people that I hired to terminate other people, from the Agency, are there. They get involved in the biggest drug scandal going on, which is whitewashed [the "Tic-Toc" scandal in Miami]. Who is the guy behind the scandal? Clines. Who's the boss of Clines? Shackley. Where do they come from? Laos....Where did the money come from? Nugan Hand. The whole goddamned thing has been moved down there....Clines was running drugs.... The pilot of the plane in Asia was Dick Secord, a captain in the Air Force....What was on the plane? Gold! Ten million bucks at a time, in gold. He was going to the Golden Triangle to pay off warlords, the drug lords....Now what do you do with all the opium?...You reinvest it in your own operations....Billions of dollars--not millions--billions of dollars.[78]

Terpil explained that the opium was then sold in Singapore, Hong Kong, and New Delhi. The money from those sales was laundered through banks including Nugan Hand.[79]

The Nugan Hand Bank was founded in Sydney in 1973

---

[77]Defendant Rafael "Chi Chi" Quintero, or Felix Rodriguez, or possibly both. Rafael and Defendant Raul are the two Villaverde brothers likely meant here.

[78]Interview with Frank Terpil by journalist Jim Hougan, conducted in 1983, quoted in part in "The Australian Heroin Connection," Covert Action Information Bulletin, Summer 1987: No. 28, p. 8.

[79]Id.

by Australian attorney Francis John Nugan and American Michael Jon Hand.[80] Hand, in his official capacity, was a member of the U.S. Special Forces in Laos under Defendants Shackley and Clines during the Enterprise's Southeast Asian venture,[81] and, on information and belief, Shackley played a major role in the establishment of the Nugan Hand Bank.

A number of investigations have revealed strong ties between Nugan Hand and Defendants Shackley, Clines and Quintero. According to one source, Shackley had a "long, close relationship with the Nugan Hand Bank;"[82] another identifies Shackley as "a Nugan Hand character."[83] An Australian Government investigation report calls Shackley a leading figure who is "relevant to a proper understanding of the activities of the Nugan Hand group."[84] Shackley, Clines and Quintero all transacted unspecified business with Hand and the bank. Clines is known to have deposited millions of dollars in Nugan Hand, on

---

[80]In a previous business partnership between the two -- Australian and Pacific Holdings, Ltd.--four of the original shareholders listed a Secord-controlled airline's address as their own, and two other shareholders were otherwise connected to the Enterprise. Lernoux, supra, p. 66.

[81]Commonwealth of Australia-New South Wales Joint Task Force Report on Drug Trafficking, 1983 (hereafter "JTF"), pp. 665-691.

[82]James A. Nathan, "Dateline Australia: America's Foreign Watergate?" Foreign Policy, Winter 1982-1983, p. 183.

[83]Kwitny, supra, p. 97.

[84]JTF, quoted in Kwitny, supra, p. 293;

information and belief acquired in the Enterprise's Southeast Asian venture; and he apparently lost about one million dollars in the bank's collapse.[85]

The Nugan Hand Bank grew throughout the 1970's, and eventually had offices, affiliates or addresses in 13 countries, including the United States, the Cayman Islands, Hong Kong, Taiwan, the Philippines and Thailand. Yet according to Jonathan Kwitny, who has written a book on the bank's activities, "The Nugan Hand Bank never did any banking."[86] It did, however, amass large sums of money over the course of its seven-year existence. The bank collected, moved, and disbursed money, but downplayed legitimate investment operations, seeking instead to profit primarily from illegal and shady dealings.[87] But when investigators started looking seriously into its activities in early 1980, Michael Hand declared that the bank was insolvent.[88]

Nugan Hand attracted depositors by providing such illegal services as shielding income from tax liability, moving it overseas and laundering funds gained from illegal activity. The bank offered unusually high interest rates, and promised its investors absolute safety and secrecy. Bank records reveal that when the bank invested in legitimate instruments like money markets, it made less interest than it regularly paid its clients. An investigation by the Hong Kong liquidator's office concluded that from 1976 to 1980, Nugan Hand lost $7.9 million in trading

---

[85]JTF, supra, p. 824.

[86]Kwitny, supra, p. 143.

[87]Kwitny, supra, p. 29.

[88]Kwitny, supra, p. 29.

securities.[89] But for exclusive services such as money laundering, the bank charged unusually high fees--usually 22 percent.[90]

Money From Drug Trafficking

Hand's relationship with Enterprise members during the Vietnam War no doubt acquainted him with many of the region's major opium producers and distributors. As a member of the U.S. Special Forces in his official capacity, from 1964 to 1967, Hand was intimately involved in the Southeast Asian venture of the Enterprise, where he worked with the Hmong army of Enterprise associate Vang Pao, presumably assisting in their training in paramilitary warfare.

Nugan Hand took deposits from and laundered money for many of the largest drug traffickers in Asia and Australia. Many investigators have concluded that the bank actually facilitated drug smuggling operations, by transferring funds within Australia and overseas. The Commonwealth-New South Wales Joint Task Force (JTF) Report concluded that Nugan, Hand and some of their employees were involved in procuring drug money and that "by 1977, Nugan Hand was well established in drug activity."[91] Similarly, the Australian Royal Commission inquiry revealed that the bank regularly moved money from Australia to points in Southeast Asia, to cover the

---

[89]Kwitny, supra, p. 165.

[90]Lernoux, supra, p. 74. Australia and most of the other nations in which Nugan Hand operated have strict laws regulating export of funds and exchanging funds into other currencies.

[91]JTF quoted in Kwitny, supra, p. 235.

cost of heroin shipped to Australia and on to the United States and other points.[92] One of the several Australian government inquiries found that the bank was linked to at least 26 separate individuals or groups "known to be associated with drug trafficking."[93] One Australian mobster appears to have used the bank in his dealings with Enterprise associate and organized crime figure Santo Trafficante, Jr.[94] Trafficante likely became involved with Nugan Hand through Shackley, as he had worked closely with Shackley and the Enterprise in Miami, and then in Southeast Asia, where he established a substantial opium network.[95]

The opium-generated profits from the Southeast Asian venture of the Enterprise were, on information and belief, laundered through the Bangkok branch office of the Nugan Hand Bank. The individual responsible for physically carrying the illicit funds for deposit, or "bag-man," for these money transfers, on information and belief was Jerry Barker Daniels. On information and belief, Daniels functioned under the supervision of Daniel C. Arnold, who was operating at the behest of Defendants Shackley and Clines.

After April 1975, the Enterprise, on information and belief established a conduit in Iran, into which a portion of the opium-generated profits from the Southeast Asian venture could be deposited from a branch office of the

---

[92]Lernoux, supra, p. 75.

[93] R.T. Naylor, Hot Money and the Politics of Debt (Simon and Schuster, 1987), p. 318.

[94]Lernoux, supra, p. 75.

[95]Kruger, supra, p. 146.

Nugan Hand Bank. The purpose of this Iran-based fund was to finance a new venture of the Enterprise in Iran.

In early 1975, Richard Armitage, working for Enterprise associate Erich von Marbod as civilian attache to the U.S. Department of Defense in South Vietnam, on information and belief established, in his private capacity, this financial conduit in Tehran at the direction of Shackley and Clines. After the fall of Saigon in April, Armitage, still working in his official capacity under von Marbod, became a Defense Department consultant for Vietnamese Refugee Affairs, requiring frequent trips to Bangkok, Thailand. From this post, Armitage, on information and belief acting in his private capacity, maintained contact with fellow members of the Enterprise, specifically Daniel C. Arnold and Jerry Barker Daniels, and, on information and belief, supervised the transfer of the Enterprise's profits both to the Nugan Hand Bank and to the financial conduit he established in Tehran.

In 1977, Nugan Hand opened an office in Chiang Mai, Thailand, a city on the edge of the Golden Triangle whose economy is based on opium. Hand personally selected Australian Neil Evans to represent the bank in Chiang Mai.[96] According to Evans, Nugan Hand and the U.S. Drug Enforcement Administration rented adjoining offices from a Nugan Hand investor and shared a receptionist. The U.S. DEA continues to rent its offices in the same building.[97] During Evans's seven-month tenure as the bank's representative in Chiang Mai, Hand directed him to take in $2.6 million in deposits from six major drug

---

[96]Kwitny, supra, pp. 208-209.

[97]Kwitny, supra, p. 215.

dealers.[98] John Owen, who worked out of Nugan Hand's Bangkok office at the same time, confirms, "There was nothing there but drug money. I'm quite sure that's what [Evans] was there for. Mike Hand sent him."[99]

Connections with the Enterprise

A number of Nugan Hand's activities fall outside normal operating procedures for a merchant bank. For example, John Owen's correspondence file contains lengthy reports for the Sydney office, directed to Michael Hand, detailing troop movements and other military and political developments in Cambodia, Laos, Vietnam, and Thailand.[100] The bank's roster of officials and other staff who previously held high positions in the CIA or the U.S. military is extensive.[101]

---

[98]Kwitny, supra, p. 213.

[99]Kwitny, supra, p. 216. The Joint Task Force deleted the entire chapter of ten pages on Nugan Hand's activities in Thailand from its report before releasing it to the public. Id., p. 206.

[100]Kwitny, supra, p. 210.

[101]These include: Adm. Earl P. Yates: the bank's president for a time and former chief of staff for Asian and Pacific strategic planning; Gen. LeRoy J. Manor: co-directed the Nugan Hand (N.H.) Manila office, after retiring as chief of staff for U.S. Pacific Command; Gen. Edwin F. Black: president of N.H. Hawaii office; Gen. Erle Cocke, Jr.: ran N.H. Washington office; William Colby: performed legal services for the bank and was CIA director 1973-76; Walter MacDonald: consultant for the bank and was a former deputy director of the CIA (for economic

The bank arranged arms sales with several nations, including Indonesia, Thailand, Malaysia, Brazil, and Ian Smith's regime in Rhodesia.[102] In one instance, Michael Hand, on information and belief operating on behalf of the Enterprise, collaborated with Ed Wilson in supplying forces in Angola with weapons, including a 1976 shipment of approximately 3,000 guns and 10 million rounds of ammunition.[103]

By 1979, Defendants Shackley and Clines were meeting with Hand frequently, on Enterprise-related business. For example, Hand tried to negotiate a deal for "oil-industry parts" on behalf of the Enterprise company American Petroleum Institute Distributors (API), originally set up with the aid of Wilson. Clines served as president of API and Shackley was a consultant;[104] Defendant Quintero and Operation 40 member Ricardo Chavez were also officers of the company.[105] In late 1979, Maurice Bernard (Bernie) Houghton, a drug runner and close adviser to Hand who had many connections with the U.S. intelligence

---

research); Guy Pauker: bank consultant and longtime CIA adviser; Dale Holmgren: ran N.H. Taipei branch and worked for CIA proprietary airline Civil Air Transport; Robert Jantzen: hired to run Bangkok office but quit after learning of drug connections and was former Bangkok CIA station chief. Kwitny, supra, pp. 13-14.

[102]Lernoux, supra, p. 72.

[103]New York Times, "North's Aides Linked to Australia Study," March 8, 1987, p. 30.

[104]JTF, supra, p. 736.

[105]Maas, supra, p. 223.

community,[106] met with Defendants Clines and Quintero and Ed Wilson in Geneva to work out a scheme to re-issue $22 million worth of Libyan letters of credit.

Houghton has been described as "the mysterious puppetmaster" behind the Nugan Hand Bank.[107] He functioned as Michael Hand's mentor and apparently recruited key staff members for the bank.[108] One intelligence officer who worked out of the U.S. Embassy in Bangkok, Allan Parks, also remembers Houghton as a civilian drug smuggler who flew C-47 cargo planes between Thailand and Australia during the Vietnam War: "There's no doubt about it, he'd fly anything...The Golden Triangle, that's where he got his opium from."[109] In 1979, Houghton swindled at least $10 million from unsuspecting U.S. employees and armed services personnel in Saudi Arabia, taking in cash in return for worthless certificates.[110] Houghton reportedly used Nugan Hand's short-lived Saudi Arabian branch to finance some of the Enterprise's Middle Eastern arms deals.[111] In 1980, after Nugan's death and the bank's collapse, Defendant Clines helped Houghton flee Australia for the Philippines. Houghton was also likely involved in some way in the military sales to Egypt then being effected by the Enterprise through Clines, Secord, Shackley, von Marbod

---

[106]Kwitny, supra, p. 59.

[107]Kwitny, supra, p. 13.

[108]JTF, supra, p. 795.

[109]Kwitny, supra, p. 59.

[110]Kwitny, supra, p. 261.

[111]Lernoux, supra, p. 73.

and Wilson.[112]

The Enterprise Helps Topple Australia's Labor Government

In 1975, Defendant Shackley and the Nugan Hand Bank, on information and belief helped bring about the ouster of Australian Prime Minister Gough Whitlam.[113]

In 1972, Whitlam ushered in Australia's first Labor Party government in over two decades.[114] In 1975, Whitlam's opposition mounted an attack against him based on a scandal involving two of his ministers. Commerce International, a Belgian company with ties to Edwin Wilson, was involved in the scandal.[115] In 1981, Joseph Flynn claimed that under Edwin Wilson's direction, he helped create some of the evidence used to ensnare Whitlam's ministers, and that Michael Hand had paid him.[116]

The opposition parties in Parliament made a major issue of the scandal, threatening to block passage of the government's budget. On November 2, 1975, Whitlam publicly accused the CIA of subsidizing his opposition, and named National Country Party chief Doug Anthony as a

---

[112]Kwitny, supra, pp. 334-335.

[113]Kwitny, supra, pp. 97, 135.

[114]Kwitny, supra, p. 131.

[115]Phillip Frazer, "Dirty Tricks Down Under," Mother Jones, February-March 1984, pp. 14-52.

[116]Nathan, supra, p. 177. Wilson was working during this period in his official capacity for Task Force 157. Marshall, supra, p. 39.

collaborator. The next day, the Australian Financial Review reported that the super-secret U.S.-Australian "space study station" in Australia, known as Pine Gap, was actually a CIA electronic intelligence facility. The article also identified Richard Stallings, former director of Pine Gap and friend of Anthony, as a CIA agent. Pine Gap's true function shocked not only the Australian public, but also top government officials, including the Prime Minister. By November 7, 1975, the covers of three more CIA agents had been blown in the press.[117]

In his official capacity, Shackley was CIA deputy director of operations at the time. He was reportedly paranoid about the Labor Party.[118] Shackley responded by sending a "biting and threatening" message to the Director General of the Australian Security Intelligence Organization (ASIO) on November 8, 1975. Shackley's cable was a drastic step that received great speculation in the Australian press.[119] A mere three days after Shackley issued his threats, Whitlam was deposed by Australia's Governor General, in an unprecedented constitutional maneuver. Shackley's actions likely played a major role in Whitlam's downfall.[120]

Nugan Hand's Fall And Subsequent Cover-Up

When Francis Nugan was found, shot dead in an apparent suicide, in January 1980, associates of the Nugan

---

[117]Kwitny, supra, pp. 135-136.

[118]Kwitny, supra, p. 131.

[119]Kwitny, supra, p. 136. The text of Shackley's cable is reprinted in Kwitny, supra, pp. 137-138.

[120]Kwitny, supra, p. 140.

Hand Bank and members of the Enterprise proceeded to cover up their activities. Hand immediately rushed back from London and called an emergency meeting of the bank's directors. He then directed a massive document-shredding operation.[121] Many documents were carted off and hidden; Houghton took one travel case full and left it in Edwin Wilson's office in Geneva.

In March 1980, two months after Nugan's death and just prior to the collapse of the Nugan Hand Bank, Ricardo Chavez, acting as a cover for Defendant Clines, bought London Capital Securities.[122] The JTF confirms that Chavez was operating for Clines: "It was a close relationship, particularly between Clines and Quintero ... many of the business partnerships and dealings so far as Quintero and Chavez were concerned were little more than nominee situations for Clines."[123]

Later, probably in April 1980, Clines and Quintero appeared at Wilson's Geneva office and asked to see Houghton's travel case. They eventually looked through the contents and removed a single sheet of typed paper;

---

[121]Kwitny, supra, p. 39. Houghton's lawyer, Michael Moloney, told everyone present, "I am fully aware of what has been going on. You all face jail terms of up to 16 years."

[122]An Australian investigation into the Nugan Hand Bank later reported that Chavez held a $325,000 account with the Bank. Kwitny, supra, p. 318.

[123]JTF, supra, p. 827; p. 763. Noting ongoing relationships, the JTF reports, "Since that time [1961] Clines, Quintero, and Chavez have remained close in terms of Agency activity, private business, and social enterprises." Id., p. 664.

Secord's name was discussed and Clines said at one point, "We've got to keep Dick's name out of this."[124]

Numerous ties, some known and others based on information and belief, existed between the Nugan Hand Bank and Defendants Shackley, Secord, Clines and Quintero. The bank was clearly involved in illegal paramilitary operations and drug trafficking, two areas of racketeering activity in which the Enterprise frequently engaged.

IRANIAN/LIBYAN VENTURE

Following the fall of Saigon in April 1975, Theodore Shackley and his associates in the Enterprise shifted their operations to the Middle East. Beginning in 1975 and continuing until the fall of the Shah of Iran in February 1979, the Enterprise worked closely with SAVAK, the Shah's secret police, to assassinate Iranian opponents of the Shah. Between 1975 and 1982, the Enterprise also operated in Libya, often on operations related to those in Iran. Defendants Theodore Shackley, Thomas Clines, Richard Secord and Rafael Quintero were integrally involved in the Enterprise's operations in Iran and Libya. Non-defendants Edwin P. Wilson and Erich von Marbod also played key roles in the Middle East. It is during this time that Shackley and Clines, through the Enterprise, set up an "off-the-shelf" covert operations capacity.

The Enterprise Moves to the Middle East

In 1975, Defendant Shackley was stationed in Washington in his official capacity as CIA associate deputy

---

[124]JTF, supra, p. 744.

director in the Directorate of Operations--second in command of clandestine operations. During 1975 and 1976, Defendant Clines was also stationed in Washington, in his official capacity as the head of CIA operations training.[125] Shackley and his associates in the Enterprise relied heavily upon former CIA agent Edwin P. Wilson as their key operative in Iran and Libya. Wilson had close relationships with Defendants Shackley and Clines, dating back to the Enterprise's Cuban venture in the early 1960s. He also had ties to Defendant Secord and to Erich von Marbod.

Wilson had been operating in Iran since 1974, officially as an agent for the super-secret Naval Intelligence Task Force 157 (TF 157).[126] Thomas Clines had arranged for Wilson to move from the CIA to TF 157 in 1971, enabling him to continue operating in his private capacity on behalf of the Enterprise.[127] During this period, from 1971 to 1975, Wilson remained in regular contact with Defendant Shackley.[128]

Wilson had operated "proprietary companies" for the CIA since 1964, and the Enterprise wanted to use similar

---

[125]Maas, supra, pp. 7-9.

[126]Sworn Statement of Edwin P. Wilson, December 17-18, 1987 (hereafter "Wilson Statement"), p. 25. Note: The Wilson Statement, which deals with information prior to the timeframe limitations set by the Court, will be provided to Defendants when the Court lifts the restrictions on discovery.

[127]Maas, supra, pp. 48-51.

[128]Kwitny, supra, pp. 97, 101.

proprietaries for its operations.[129] Wilson operated many commercial fronts, including World Marine, Inc. and Maryland Maritime, Inc.[130] He also founded Consultants International, which Wilson claims functioned only as a private business.[131]

Operating in Iran in approximately 1975, Wilson began advising SAVAK, on information and belief at the behest of Shackley and Clines, on using sophisticated radio equipment to locate SAVAK's adversaries. He then relayed these communications to Shackley and Clines.[132] SAVAK was having trouble controlling the Shah's opposition at the time, which was succeeding in assassinating SAVAK agents.

Following the fall of Saigon in 1975, Defendant Secord was promoted to Brigadier General and transferred to

---

[129]Wilson Statement, supra, pp. 461-462.

[130]Maas, supra, p. 49.

[131]Maas, supra, p. 32; Wilson Statement, supra, p.8. Washington lobbyist Robert Keith Gray was listed as Consultants International's director. During the 1960s and 1970s, Gray was in charge of the public relations firm Hill and Knowlton's Washington office, and also served as a key advisor on Ronald Reagan's 1980 election campaign. In 1983, after establishing his own firm, Gray and Company, he hired Defendant Owen who stayed on at Gray and Co., taking occasional breaks to travel to Central America to meet with contra leaders and backers,until November 1984. Iran-Contra Hearings, Testimony of Robert W. Owen, May 14, 1987, pp. 325-330 (hereafter "Owen Testimony").

[132]Wilson Statement, supra, p. 24-25.

Iran, to function in his official capacity as chief of the U.S. Air Force's Military Assistance Advisory Group (MAAG).[133] In this position, he represented U.S. defense contractors in selling arms to the Shah.[134] Secord was also responsible for training Iranians in the use of newly acquired military equipment.[135] In addition, he managed all U.S. Air Force programs and some U.S. Army and Navy security assistance efforts in Iran.[136] In September 1975, the Defense Department sent Erich von Marbod to Iran to monitor all U.S. military contracts there.[137]

SAVAK officials soon became aware of Wilson's close connections with Secord and von Marbod, and began pressuring Wilson to procure more equipment and weapons.[138] Wilson regularly informed Secord and von Marbod of his work with SAVAK. He was also regularly debriefed by Defendant Shackley during Wilson's frequent visits to the United States.

---

[133]Joint Hearings on the Iran-Contra Investigations, Testimony of Richard V. Secord, May 5-8, 1987, (hereafter "Secord Testimony"), p. 137.

[134]Marshall, Scott, and Hunter, p. 156.

[135]"Playboy Interview: General Richard Secord", Playboy, October, 1987, p. 61.

[136]Marshall, supra, p. 156.

[137]In the final days of the Vietnam war, von Marbod had worked on U.S. military equipment retrieval, and in 1978 he was sent to Tehran to again oversee the U.S. salvage effort. Maas, supra, pp. 53-54, 137.

[138]Wilson Statement, supra, pp. 26,27

Political Assassinations in Iran

Once Secord and von Marbod arrived in Iran, Wilson, at the direction of Shackley and Clines, on information and belief acting in their private capacities, began providing SAVAK with electronic surveillance equipment, used in "search and destroy" operations to track down anti-Shah dissidents. Over time, Wilson learned that SAVAK agents were murdering the Shah's opponents. On one occasion, a SAVAK captain told Wilson that agents had shot to death nine handcuffed and defenseless dissidents after one tried to escape. Wilson relayed all of this information to Shackley, Clines, von Marbod and Secord; the Defendants continued to support Wilson in his efforts to silence Iranian dissidents.[139]

In April 1976, Task Force 157 was disbanded by the new head of Naval Intelligence, Admiral Bobby Ray Inman. Wilson remained in Iran, however, and continued working in his private capacity with SAVAK, at the behest of Shackley, Clines, Secord and von Marbod, who, on information and belief, were working in their private capacities.[140]

During this period, Shackley and his associates in the Enterprise began assisting SAVAK with assassinations. SAVAK provided Wilson with the names of anti-Shah activists, which Wilson passed on to Shackley through Defendant Rafael "Chi Chi" Quintero.[141] The anti-Shah Iranians were then executed by hired assassins or SAVAK

---

[139]Wilson Statement, supra, pp. 26-28, 36, 37.

[140]Wilson Statement, supra, p. 39.

[141]Wilson Statement, supra, pp. 46-47.

agents.[142]

In August 1976, Shackley attempted to recruit Defendant Albert Hakim, the Iranian-born head of Stanford Technology Corp. (STC). According to a CIA memorandum: "Shackley's contact [possibly Wilson] indicated that Hakim was anxious to play a pivotal role in the Iranian purchase of American technology and that Hakim let it be known that he had major contacts in Iran with the military and SAVAK."[143]

While in Iran, Secord and von Marbod began to work with Hakim, who was introduced to Secord by Ed Wilson.[144] Shackley had instructed Hakim to contact Secord and von Marbod for help in obtaining contracts with the Iranian government to sell military-security equipment.[145] Hakim's STC maintained several contracts during the 1970s. One of these, worth $5.5 million, supplied Rockwell International's IBEX electronic spying and communica-tions project for the Shah, which Secord oversaw. Secord reportedly helped Hakim win another $7.5 million contract with the Iranian Air Force for a telephone monitoring system; the deal was arranged through bribing Iran's air force commander, Gen. Mohammed Khatemi.[146]

---

[142]Wilson Statement, supra, pp. 45-46.

[143]Emerson, supra, pp. 24-25.

[144]Marshall, supra, p. 157; Village Voice, May 19, 1987, p. 30.

[145]Emerson, supra, p. 25.

[146]Marshall, supra, pp. 156-157. Between 1980 and 1983, Shackley served as a consultant to STC. Id.

In August 1976, the three top managers on the IBEX project--William C. Cottrell, Robert R. Krongard, and Donald G. Smith-- were assassinated. Officials blamed Libyan-trained Islamic Marxist guerrillas for the murders.[147] Gene Wheaton, former IBEX Director of Security and a longtime U.S. military criminal investigator and law enforcement officer who has been investi-gating the murders for over ten years, concludes, however, that the officials were killed to cover up a scam for skimming profits from the IBEX project, and that Defendants Secord, Clines, Hakim, Shackley and Quintero were linked to the assassinations.[148]

Wheaton, in his ongoing investigation into the IBEX murders, has discovered that Richard Secord, Thomas Clines, Albert Hakim, and Rafael Quintero have "a historical record of skimming off of military projects, taking kickbacks" and that they have laundered "large amounts of pay-offs...on military programs in the Middle East through Swiss bank accounts."[149] Wheaton testified that the three Rockwell men "were murdered to cover up misdeeds on the project -- a project that there is documentary proof that Albert Hakim was the bag man for -- and that this was part of the Ed Wilson network."[150]

John "I.W." Harper is a member of the Enterprise who

---

[147]Washington Post, August 29, 1976; August 30, 1976; January 2, 1977.

[148]Wheaton Deposition, supra, pp. 263-267. The only two individuals accused of the assassinations were killed in shootouts with the Iranian authorities.

[149]Wheaton Deposition, supra, pp. 206, 211.

[150]Wheaton Deposition, supra, p. 266.

served as head of security for the IBEX project between November 1976 and May 1977, when he was replaced by Wheaton.[151] The day before the assassinations, Frank Terpil, who worked for the Enterprise in association with Wilson, was in Tehran.[152] The day after the murders, Terpil flew to Tripoli, Libya, where he met Harper and informed him that the "Rockwell matter" had been taken care of.[153] Earlier, in the summer of 1976, Harper had seen a sand-box training mock-up of the ambush site for the IBEX assassin-ations, at a base where Wilson and Terpil were training Libyans in an Enterprise operation discussed below. Harper later recognized this mock-up as an exact replica of the actual scene of the IBEX assassinations.[154]

Operations in Libya

---

[151]Wheaton Deposition, supra, p. 1055. Harper was forced to leave the IBEX position after only six months when it was learned that Washington Post reporter Bob Woodward was preparing to publish a damaging series of articles on Ed Wilson that might link Wilson to Harper. Wilson had hired Harper in 1976 to train Libyans on the use of explosive ordnance, a project arranged by Wilson and Frank Terpil, discussed below.

[152]Wheaton Deposition, supra, p. 1027-1028. From at least 1976 to 1978, Terpil ran a sales company called Intercontinental Technology, which was a subsidiary of Defendant Hakim's Stanford Technology. Maas, supra, pp. 58-65; Wilson Statement, supra, pp. 10, 12-24;

[153]Wheaton Deposition, supra, pp. 264-265, 1026.

[154]Wheaton Deposition, supra, pp. 1026, 1055.

In 1976, Shackley and his associates in the Enterprise directed Wilson to begin operations in Libya. To advance that effort, Wilson contacted Frank Terpil, whom he had met at a 1975 Christmas party and who had business connections in Libya.[155] Wilson arranged a business deal with Terpil to supply time-delay fuses to Libya. Wilson and Terpil sent John Harper, Harper's son Wayne, Douglas Schlachter, and another individual to Libya to train the Libyan military to use these explosives.[156] Wilson continued to brief Shackley, Clines, Secord and von Marbod on these activities. Wilson also passed information on Libya to them through Quintero or Clines; and Wilson was debriefed by Shackley when he returned to the United States.[157]

Between April 1976 and April 1977, Shackley instructed Wilson to locate a suspected terrorist training base in Libya. The site was believed to be a training base for, among others, Iranian dissidents who were secretly transported back to Iran to assassinate SAVAK officers.[158] Toward this end, Wilson entered into an escalating series

---

[155]Wilson Statement, supra, pp. 10, 13.

[156]Wilson Statement, supra, pp. 16-18.

[157]Wilson Statement, supra, 19-21. Earlier, Shackley had instructed Wilson to find out to whom, through which arms dealers, and for what price the Vietnamese were selling certain small American arms, especially M-16 rifles. Wilson discovered this information by tracing the M-16 supply route, and he relayed this information to Shackley through Quintero. Wilson Statement, supra, pp. 20, 380-82.

[158]Wilson Statement, supra, pp. 48-50.

of business contracts with Libya. Wilson contracted with Libya to provide mechanics from England to service Libyan C-130 jets, and instructors to train Libyan pilots to fly the aircraft. Shortly thereafter, Wilson arranged to sell CH-47 helicopters to the Libyan government. Both deals permitted Wilson and his agents to fly over Libya at extremely low altitudes, enabling them to locate guerrilla training bases. In late 1977, Wilson hired Lloyd Jones, who had worked under Shackley in Laos and Vietnam, to run the military training operation.[159]

In order to locate the training base more precisely, Wilson provided ex-Green Beret mercenaries to Libya as trainers. The trainers reported the base's exact location to Wilson and he passed this information on to Shackley. The operation at this secret Libyan base included foreign trainees from Africa, Latin America, the Middle East, the Philippines and Europe.[160]

The Libyan government then called on Wilson to build a "clean room" in Libya, to manufacture electronic equipment. The room actually became the final processing point for foreign rebels who were returning to their home countries to wage war.[161] Wilson had an office in the clean room, and he took advantage of his close proximity to the rebels to learn their identities and destinations.[162]

---

[159]Wilson Statement, supra, pp. 52, 53.

[160]Wilson Statement, supra, p. 65.

[161]Wilson Statement, supra, p. 69.

[162]Wilson learned that East Germans were manufacturing false passports for these foreigners. Joseph C. Goulden, The Death Merchant, (Simon and Schuster, 1984) p. 157; Wilson Statement, supra, pp. 65-66, 90-94,

Wilson provided Shackley and Clines, via Quintero, with the name, airline and flight number, destination, and type of passport carried by over 100 dissidents as they departed from Libya. Shackley, Clines and Quintero then targeted selected departing rebels for assassination by passing the information on to the secret police forces of various foreign governments, which performed the killings.[163] Wilson stated that Quintero had been known to arrange for assassinations using the Villaverde brothers, Rafael and Defendant Raul, as assassins.[164]

Quintero himself is, on information and belief, a professional assassin who had been recruited by the Enterprise for numerous assassinations, first in Cuba, and then in Southeast Asia and the Middle East. When Wheaton confronted Quintero with a list of 20 people related to Enterprise operations who had died under mysterious circumstances, Quintero denied knowledge of five or six of them, but of the remainder stated that if he were ever granted immunity and compelled to testify about past acts, it would be the biggest scandal ever to hit the

---

104, 154, 163-166. Wilson also obtained the specific flight information from Zachariah Atar, a senior member of the Palestinian Liberation Organization (PLO) living in Libya. Wilson Statement, supra, p. 98.

[163]Wilson Statement, supra, pp. 70-72, 94, 95, 104, 160-171.

[164]Wilson Statement, supra, pp. 162, 170, 171. Quintero had also sent the Villaverde brothers to Libya to work under Wilson as explosive ordnance instructors. Wilson Statement, supra, p. 171.

United States.[165]

In 1977, Wilson had suggested to Clines that Clines obtain the position of staff liaison between the CIA and the Defense Intelligence Agency (DIA); "in other words between CIA and Secord."[166] A new intelligence information path developed, whereby Secord informed Clines of which Soviet weaponry the DIA was concerned about in Libya; Clines, in turn, informed Wilson; and Wilson instructed his mercenaries to gather the requested information on the Soviet weapons systems.[167]

In 1978, Wilson employed Alexander Raffio to provide electronic jamming devices to Libyan leader Muammar Qaddafi. Through this arrangement, Wilson gathered intelligence on the Libyan electronics industry, and the Libyan Navy and Air Defense Command, which he continued to pass on to Shackley until his arrest in 1982.[168]

In 1980, Wilson was indicted in the U.S. for selling illegal arms and explosives to Libya. Wilson remained in Libya to avoid prosecution, and continued to pass information concerning assassination targets back to Shackley and his associates in the Enterprise through Quintero. Wilson continued working with Shackley until 1982, when he was arrested by U.S. marshals in the

---

[165]Wheaton Deposition, supra, pp. 261-262, 267-273.

[166]Wilson Statement, supra, p. 74.

[167]Wilson Statement, supra, p. 74.; Maas, supra, p. 108.

[168]Wilson Statement, supra, pp. 75-78.

Dominican Republic and sent to prison in the U.S.[169]

The Enterprise Moves Underground

In the mid-1970s, following the Watergate scandal and press reports of illegal CIA activities in the United States and abroad, Congress took action to limit CIA abuses. In 1974, Congress passed the Hughes-Ryan Amendment to the 1961 Foreign Assistance Act, requiring the director of the CIA to brief at least eight separate congressional committees prior to any covert action, other than simple intelligence-gathering.[170] In 1975, both Houses of Congress launched investigations into the CIA. The Church Committee in the Senate and the Pike Committee in the House of Representatives uncovered further evidence of the CIA's history of widespread illegal activity.[171]

Shackley anticipated that President Ford, if re-elected in 1976, would appoint him Director of the CIA.[172] This would allow Shackley to continue "black" operations in his private capacity, avoiding as best he could the new oversight law. In 1975, Shackley, Clines, Secord, von Marbod and Wilson began discussing contingency plans should Jimmy Carter or another reform-minded candidate win the presidency.

In the summer of 1975, Shackley and his associates met at Wilson's residence in Virginia to discuss setting up

---

[169]Wilson Statement, supra, p. 75; Maas, supra, pp. 266-268; Goulden, supra, pp. 388-390.

[170]Ranelagh, p. 610.

[171]Ranelagh, supra, p. 587.

[172]Maas, supra, p. 8.

an off-the-shelf, self-financing, covert operations capacity with Shackley, Clines, Secord, Wilson and von Marbod serving as operational officers.[173]

Von Marbod, Secord and Wilson again discussed setting up their "private CIA" as they drove in Secord's armored limousine to a ski resort in northern Iran during the winter of 1976-77. On the trip, they discussed their interest in setting up a cover business to generate personal profit and to continue covert operations without presidential, congressional, or CIA knowledge or approval. Wilson suggested that they set up a proprietary, perhaps a think-tank, that could conduct nation studies for foreign governments.[174]

Shackley and his associates in the Enterprise formally created their private corporation in December 1978, when Shackley, Clines, Secord, von Marbod and Wilson met at a Crystal City, Virginia Holiday Inn. Clines paid for the room with his American Express credit card.[175] The group agreed at this meeting that Ed Wilson would direct his attorney, Edward Coughlin of Geneva, Switzerland, to transfer $500,000 into a special Swiss bank account. These funds were, on information and belief, generated by Wilson through his earlier activities on behalf of the Enterprise, and would be used to capitalize and incorporate International Research and Trade Corporation (IRT). IRT would be the parent company through which the criminal racketeering activities of the Enterprise would

---

[173]Wilson Statement, supra, p. 179.

[174]Wilson Statement, supra, pp. 181, 188-189.

[175]Wilson Statement, supra, p. 190.

be conducted after January 1979.[176] IRT had two primary functions: to generate profit and to conduct private covert operations. The ability of members of the Enterprise to carry out criminal covert operations in their private capacities, had been severely curtailed when President Carter and his CIA director Stansfield Turner transferred or fired those with records of such conduct. The Enterprise sought to fill the gap, as a private and independent profit-making venture.[177]

Clines would serve as president of IRT until Shackley retired from the CIA, which he planned to do shortly.[178] As the only publicly identified company official, Clines, who retired from the CIA in October 1978,[179] provided cover for the other partners.[180]

Secord, in 1978, left his post in Iran to become director of military assistance and sales in the Defense Department. In this position, he controlled sales to the entire Middle East, the most lucrative arms market in the world, with such major arms buyers as Israel, Saudi Arabia and Egypt. Secord dealt directly with arms manufacturers, negotiating terms and coordinating delivery. According to

---

[176]Wilson Statement, supra, 194-195.

[177]Wilson Statement, supra, p. 201.

[178]Wilson Statement, supra, p. 207.

[179]"Ex-CIA Agent's Associates Run Arms Export Concern", New York Times, September 6, 1981 (hereafter New York Times, September 6, 1981).

[180]Clines held the stock of Shackley, Secord and von Marbod as they continued to serve in government. Wilson Statement, supra, pp. 190-193.

the plan, he was to stay at his government post to assist the Enterprise.[181]

Von Marbod, former senior U.S. defense representative in Iran, was by 1978 the Pentagon's deputy director of the Defense Security Assistance Agency (DSAA)[182], where he was able to determine which companies received Pentagon contracts.[183] He, too, would remain in government, and use his authority to steer lucrative business to IRT--particularly the imminent $4 billion post-Camp David Accords arms contract with Egypt.[184] Wilson also was to use his business contacts to generate business for IRT in Libya.[185]

The five partners met again, in January 1979, at the Key Bridge Marriott hotel in Rosslyn, Virginia.[186] By this time, Wilson's $500,000 seed money was in place.[187] Clines had earlier set up a number of companies with Wilson's help, in addition to IRT, including American

---

[181]Wilson Statement, supra, pp. 189, 204-207, 209.

[182]DSAA was established by the Secretary of Defense in 1978 to direct, administer and supervise the execution of security assistance programs, including the foreign military sales (FMS) program to Egypt.

[183]Maas, supra, pp. 54, 137.

[184]Wilson Statement, supra, pp. 189, 192-193, 209.

[185]Wilson Statement, supra, p. 194.

[186]Wilson Statement, supra, p. 232.

[187]Wilson Statement, supra, pp. 219-220. I.R.T. was incorporated in Bermuda in April, 1979. New York Times, supra, September 6, 1981.

Petroleum Institute Distributors (API), established in June of 1978,[188] and Systems Services International (SSI), incorporated in September of 1978.[189] These companies were to be part of IRT's operations, and the five partners of IRT were to hold equal shares in the companies.[190]

Aside from Clines, who served as president for the companies, API's executives included Rafael Quintero, secretary and director; Ricardo Chavez, treasurer and director; and Theodore Shackley as a consultant, a role he served for SSI as well.[191] By September 1979, Shackley had left the CIA.[192]

At this Key Bridge meeting, Shackley, Secord, Clines, von Marbod and Wilson discussed the difficulties of securing an Egyptian arms deal, explored private covert operations possibilities and reconfirmed their intention to carry out racketeering activity through this corporation. Clines reported that he had made an illegal $20,000 payoff to the head of the Mexican national oil company, Petroleanos Mexicanos (PEMEX), to secure an oil contract for API.[193] In addition, the Libyans had asked Wilson for a military study on Egypt, and in the meeting the group decided that IRT would submit a proposal.

---

[188]Goulden, supra, pp. 176-177.

[189]New York Times, supra, September 6, 1981.

[190]Wilson Statement, supra, pp. 232, 239.

[191]New York Times, supra, September 6, 1981.

[192]New York Times, supra, September 6, 1981.

[193]Wilson Statement, supra, pp. 232-233. The president of PEMEX, Jorge Diaz Serano, is a former business partner of Vice President George Bush.

Secord and von Marbod drafted a "nation-study" proposal on Egypt and sent it to Wilson in Libya, through his former employee Douglas Schlachter.[194]

Subsequent to this meeting, Wilson received a call from Defendant Clines, who informed him that Secord and von Marbod would be going to London, where Wilson had an office. Clines instructed Wilson to give them $10,000. Wilson personally gave them the money after Secord and von Marbod told him the payment related to their last meeting. Wilson understood this to mean that the payment was for maintaining the off-the-shelf operation.[195]

In the early stages of IRT, the $4 billion Egyptian arms contract that von Marbod, Secord, Shackley, Clines and Wilson had conspired to land for IRT was jeopardized: the Egyptian defense minister demanded that former Egyptian intelligence officer Hussein K. Salem be in charge of the arms shipments.[196] To deal with this impasse, Clines arranged with Salem to set up the Egyptian American Transport & Services Corporation (EATSCO) in August 1979, to handle the arms shipments. Clines, on behalf of the Enterprise, would be a 49 percent partner; Salem would control the remaining 51 percent.[197]

In December 1979, von Marbod approved the exclusive Egyptian arms contract to EATSCO, authorizing a $13.5 million advance payment for shipping costs, which was placed in a Swiss bank. Additional payments to EATSCO

---

[194]Wilson Statement, supra, pp. 236-237.

[195]Wilson Statement, supra, pp. 240-244.

[196]Maas, supra, pp. 139-140.

[197]Wilson Statement, supra, p. 224; New York Times, supra, September 6, 1981.

totaled $71 million. Clines was the only Enterprise stockholder identified publicly, but his half of the profits from the Egyptian arms deal continued to be divided among Shackley, Secord, von Marbod, Wilson and himself.[198] EATSCO shipped more than $1 billion worth of arms to Egypt through two Baltimore transport companies: R.G. Hobleman and Air Freight International. The Baltimore companies shipped equipment to Egypt and forwarded the bills to EATSCO, which passed the bills to DSAA. There were 38 shipments from November 1979 to February 1982; 34 of the 38 bills were found to be padded, amounting to $8 million in overcharges.[199]

In 1982, after a two-year investigation, the Justice Department filed embezzlement charges against EATSCO for $8 million worth of overcharges.[200] Clines entered a guilty plea on behalf of SSI, the corporate parent of EATSCO, and the firm agreed to repay the government $100,000, in addition to receiving the maximum fine of $10,000.[201]

---

[198]Clines informed his close associate Felix Rodriguez that Secord had a 20-25% share in EATSCO. Joint Hearings on the Iran-Contra Investigations, Testimony of Felix Rodriguez, May 28, 1987, pp. 38-39.

[199]Goulden, supra, pp. 365-366.

[200]"The Secret World of General Secord," Newsweek, May 11, 1987, p. 20 (hereafter Newsweek, May 11, 1987).

[201]Maas, supra, p. 279-280. EATSCO's Egyptian partner, Salem, pleaded guilty to charges of submitting inflated invoices and paid a personal fine of $40,000 and $3.03 million for partial reimbursement of the false claims. Goulden, supra, p. 366.

Glenn A. Robinette, the security officer for the Enterprise, was employed by EATSCO from approximately September 1981 to January 1982. In February 1984, the same month that Clines paid the $100,000 fine, Robinette was instructed by Clines to pick up a check from Defendant Secord. Robinette met with Defendant Secord, who gave Robinette a $33,000 check which he then deposited in Clines's bank account. Apparently, this payment to Clines was intended to cover Secord's share of the fine.[202]

With Shackley, Secord and von Marbod denying any role in EATSCO, Assistant U.S. Attorney Lawrence Barcella had intended to threaten Clines with a jail term, in the hopes that Clines would reveal the three others' interest in the company. Following the fraud disclosure, von Marbod abruptly resigned from the government, while Secord was removed from his post, pending a polygraph test on his connections to EATSCO and Wilson.[203] The polygraph never took place, and current Secretary of Defense Frank C. Carlucci, a former deputy director of the CIA who was then second in command at the Defense Department, re-instated Secord.[204] Shortly thereafter, Secord retired with a full pension.[205]

As Barcella pursued a jail sentence for Clines, the Reagan Administration's expert on terrorism, Michael

---

[202]Joint Hearings on the Iran-Contra Investigation, Testimony of Glenn A. Robinette, June 23, 1987, pp. 65-69 and Exhibit 10.

[203]Marshall, supra, p.41.

[204]Maas, supra, p. 247.

[205]Village Voice, supra, May 19, 1987.

Ledeen, intervened and asked Barcella to drop his efforts against Shackley, Secord and von Marbod, explaining that the abuses might have been related to U.S. Government-authorized covert operations. Barcella was then replaced by Theodore Greenberg, assistant U.S. attorney in Alexandria, Virginia, who dropped all but Clines from his probe.[206]

Upon leaving government service, Secord was immediately hired by Stanford Technology, owned by Albert Hakim. The two set up a subsidiary called Stanford Technology Trading Group International, located in Vienna, Virginia.[207] After resigning from his Defense Department post, von Marbod became a consultant for Sears World Trade, a subsidiary of Sears Roebuck, whose chairman at the time was Carlucci.[208] Von Marbod now reportedly works for an aerospace company, LTV Corporation, in Europe.[209]

Secord, Hakim, Clines, Shackley, von Marbod, Quintero and other Enterprise members continued with their secret operations after the EATSCO and Wilson scandals died down. By 1985, Secord, Hakim and Clines were the primary private suppliers of weapons to the contra rebels fighting the government of Nicaragua, with Secord and Clines making frequent trips to Europe and the Middle East to make arms purchases. Quintero, on

---

[206]Marshall, supra, p. 41; Maas, supra, pp. 247-248.

[207]Newsweek, supra, May 11, 1987.

[208]Maas, supra, p. 288.

[209]Village Voice, "The Ex-Spy and the Old Boys", February 24, 1987, p. 26 (hereafter Village Voice, February 24, 1987).

Stanford Technology's payroll at $4,000 a month, would receive the weapons in Honduras and oversee their distribution to the contras.[210]

In October 1985, the Enterprise began shipping arms to the Afghan rebels. The Enterprise set up a corporation in Houston, Texas, with three former logistics specialists for Air America.[211] Secord, Hakim and Clines acted as behind-the-scenes operators of the company. The Enterprise bought Soviet-type weapons manufactured in Egypt, along with other weapons from Europe, and delivered them to the Afghan rebels, the Angolan rebels, and other rebel groups, with exorbitant mark-ups. These deals were characterized by fraudulent overbilling and undershipping, with the excess profits diverted to other programs of the Enterprise, including the Nicaraguan contra resupply effort, discussed below.[212]

THE NICARAGUAN VENTURE

The Approach to Somoza

In approximately 1976, Defendants Shackley and Clines sent Enterprise member Ed Wilson to Nicaragua to meet with Anastasio Somoza, then-President of Nicaragua, to discuss the provision of military aid by the Enterprise to his regime.[213] Wilson was accompanied on this trip by Dr.

---

[210]Wheaton Deposition, supra, p. 125.

[211]Wheaton Deposition, supra, pp. 202, 203.

[212]Wheaton Deposition, supra, pp. 200-202, 250-252.

[213]Sworn Statement of Edwin P. Wilson, December 17-18, 1987 (hereafter "Wilson Statement"),attached as an exhibit to this submission, pp. 109-115, 442-454.

Manuel Artime.[214] Clines had previously introduced Wilson to Artime, a Bay of Pigs veteran who had a contract with Nicaragua to handle their meat exports.[215] The contract between Artime and Nicaragua was merely a ruse to pay Artime for organizing a force of approximately 100 Cubans to protect Somoza in the event of an uprising or revolt.[216] Artime's operation was clearly known by Clines, if not devised by him.[217] During this visit, Wilson discussed with Somoza the supply of military equipment and supplies to Nicaragua by the Enterprise and was later debriefed by Clines.[218]

---

[214]Artime was a close friend of E. Howard Hunt. Besides being an organizer of the "Cuban Defense Fund" which had been used to funnel secret hush money payments to the Watergate burglars, Artime also served as a key assassination conspirator in the plot to kill Fidel Castro. Bernard Fensterwald, Jr., Assassination of JFK: Coincidence or Conspiracy, (Zebra Books, 1977), p. 513. Artime later became the mentor for drug money launderer Ramon Milian Rodriguez. Leslie Cockburn, Out of Control (Atlantic Monthly Press, 1987) (hereafter "Cockburn"), p. 154.

[215]Wilson Statement, supra, pp. 443-444.

[216]Wilson Statement, supra, p. 109. Artime had already helped the CIA covertly deliver $30-40 million to Somoza in the mid-1970's with the assistance of his accountant, Ramon Milian-Rodriguez. Cockburn, supra, p. 154.

[217]Wilson Statement, supra, p. 447.

[218]Wilson Statement, supra, pp. 453-454.

After President Carter took office in January 1977, Clines asked Wilson to meet with Somoza again and to draft a proposal to present to the Nicaraguan dictator.[219] Clines was concerned that President Carter would refuse assistance to Somoza, who "was going to go down the drain."[220]

Shortly after API Distributors was formed in June of 1978, Wilson, representing the Enterprise through API and Defendants Clines, Shackley and Quintero, met with Somoza again in Miami and made a proposal for the provision of a private covert operations capacity.[221] The proposal was drafted by Wilson, after he had consulted with Clines.[222] Clines informed Wilson's former employee, Douglas Schlacter, that the project involved providing Somoza with a personnel protection system, and that a private company would be established to handle the project.[223]

At the Miami meeting with Somoza, Wilson proposed that the Enterprise provide "secure intelligence nets, the use of psychological warfare, and an excellent counter-intelligence force." As part of the deal, the Enterprise would provide five "advisors," one of whom was likely to be Defendant Quintero, to conduct field training and

---

[219]Wilson Statement, supra, p. 457.

[220]Wilson Statement, supra, pp. 108-111.

[221]Wilson Statement, supra, p. 130.

[222]Wilson Statement, supra, p. 134.

[223]Wilson Statement, supra, Exhibit B (Statement of Douglas Schlacter to the FBI on December 11 and 29, 1981).

manage the government's counter-insurgency effort. The intelligence network would provide the necessary information for Somoza's forces to carry out "search and destroy" missions, including assassinations[224] against the rebel forces of the Frente Sandinista de Liberacion (FSLN) and other Somoza opponents.[225] This "search and destroy" capacity would be essentially identical to the assassination operation provided by the Enterprise for SAVAK in Iran.[226] In addition to the written proposal, Wilson orally offered to provide arms and ammunition to Somoza as well.[227] Somoza objected to the proposal's cost of $650,000 a year and declined the offer at that time.[228]

Early in 1979, Wilson again approached Somoza at the direction of the Enterprise. Since the Carter administration had cut off all official U.S. military assistance to Nicaragua,[229] Wilson once again offered the

---

[224]Wilson Statement, supra, pp. 141-142.

[225]Wilson Statement, supra, pp. 119-125 and 135-147.

[226]Wilson Statement, supra, pp. 135-138 and 142.

[227]Wilson Statement, supra, p. 131.

[228]Manhunt, supra, pp. 138, 231; Wilson Statement, supra, p. 133 and Exhibit B.

[229]In February, 1979, the U.S. State Department announced that the United States was recalling more than half of its officials from Nicaragua and suspending all new economic and military aid to that country. Report of the Congressional Committees Investigation the Iran-Contra Affair with Supplemental, Minority, and Additional Views, S.Rep. 100-216, H.Rep. 100-433, November 1987 (hereafter "Iran-Contra Congressional Report"), p. 27.

Enterprise's services in obtaining arms, ammunition and other military equipment.[230] Meanwhile, Clines and other members of the Enterprise, were attempting to cut Wilson out of the operation. Somoza, while stalling on Wilson's offer and without Wilson's knowledge, arranged arms deals with Clines, Shackley and Quintero.[231] Beginning in approximately March of 1979, the Enterprise agreed to provide Somoza with a private supply network of military equipment and an "intelligence and assassination" program.

From approximately March of 1979 to July of 1979, Defendant Rafael (Chi Chi) Quintero acted as the "supply officer" for arms and munitions being shipped to the regime of Somoza. The weapons were supplied by Defendants Shackley, Secord, Clines and Hakim through the Enterprise.

Following his ouster from Nicaragua in July 1979, Somoza met several times in the Bahamas with Defendant Quintero, in the latter's capacity as a representative of the Enterprise. They agreed that Defendants Shackley and Clines and others involved in the Enterprise's provision of military hardware would continue to sell arms to Somoza and his followers, in their new incarnation as "the contras," to be used in an effort to overthrow the new government of Nicaragua. Quintero was to be the executive officer for this operation.[232] Arrangements were apparently made to continue the supply of arms. Until June 1981, when the U.S. government officially, though covertly, took it over, this secret supply operation of the Enterprise

---

[230]Wilson Statement, supra, 149-150.

[231]Wilson Statement, supra, pp. 148-149, 457-459.

[232]Cockburn, supra, p. 106.

continued under the supervision of Defendant Quintero.[233]

Singlaub and the World Anti-Communist League (WACL)

On November 22, 1981, Defendant John K. Singlaub convened a meeting to create the United States Council for World Freedom (USCWF), the U.S. chapter of the World Anti-Communist League (WACL).[234] WACL was originally created by the intelligence organizations of Taiwan and South Korea to provide a vehicle for anti-Communist propaganda. Since its formation, WACL has had a strong Nazi component, with at least three European chapters controlled by former Nazi SS officers.[235] By 1980, a new, more action-oriented and dangerous League began to appear, and Central America was the focus. At a 1980 League conclave, an agreement was made in which Argentine counter-terrorists and torture specialists would be sent to El Salvador to assist in the anti-communist struggle there.[236]

Within two months, Roberto D'Aubuisson of El Salvador,[237] with the assistance of Mario Sandoval Alarcon,

---

[233]Wheaton Deposition, supra, pp. 538-539.

[234]Anderson and Anderson, supra, p. 150.

[235]Peter Dale Scott, Jonathan Marshall and Jane Hunter, The Iran Contra Connection: Secret Teams and Covert Operations in the Reagan Era (South End Press, 1987) (hereafter "Scott, Marshall and Hunter"), pp. 20-21.

[236]Anderson and Anderson, supra, pp. 119-21.

[237]D'Aubuisson was implicated in the murder of Archbishop Oscar Romero in El Salvador. Christopher

the death squad "godfather" of Guatemala, had been provided with at least 50 Argentine unconventional-warfare advisors to help D'Aubuisson's squads perfect their "counterterror tactics."[238] By 1980, the remnants of Somoza's National Guard had made their way to Guatemala after their defeat. While there, the fledgling contras received the important support of Sandoval Alarcon, Defendant Singlaub's WACL associate, which kept them alive.

Defendant Singlaub had been asked to form the U.S. chapter while attending the 1981 WACL conference as an observer.[239] With a loan of $20,000 from Taiwan, USCWF was formed for the purpose of providing "support and assistance to the democratic, anti-communist Freedom Fighters of the world."[240] USCWF reached out to people with past involvement in national security and foreign policy issues, as well as heads of conservative political and academic organizations.[241] Singlaub was an advocate of unconventional warfare, which he defined as "low intensity actions, such as sabotage, terrorism, assassination and guerrilla warfare," which would further change the function

---

Dickey, With the Contras (Simon & Schuster, 1987) (hereafter "Dickey"), supra, pp. 86-7; Scott, Marshall and Hunter, supra, p. 20.

[238]Anderson and Anderson, supra, pp. 147-8.

[239]Anderson and Anderson, supra, pp. 151-152.

[240]Anderson and Anderson, supra, p. 152; Letter from Singlaub to Rev. Don White, Gospel Advance Mission, dated February 13, 1985.

[241]Anderson and Anderson supra, p. 152.

of WACL.[242]

Even before the creation of USCWF, Singlaub was already involved in Central America. In December 1979 he and retired General Daniel Graham headed a delegation from the American Security Council, a private right-wing organization,[243] on a trip to Guatemala.[244] While there, the delegation relayed the message that "'Mr. Reagan recognizes that a good deal of dirty work has to be done.'"[245] Death squad activity in Guatemala increased dramatically following their trip.[246]

Defendant Singlaub was accompanied on his second trip to Guatemala by General Gordon Sumner of the Council for Inter-American Security in 1980. In the 1979-80 period, Sumner had been in Washington, D.C., looking for ways for groups fighting the new government of Nicaragua to get started.[247] The message he and Singlaub carried to Guatemala on this trip was that "'help was on the way in the form of Ronald Reagan,'" who was campaigning for the Presidency of the United States.[248] Another purpose of these trips was to "forge an alliance between the Reagan campaign and the local backers of

---

[242]Anderson and Anderson, supra, p. 120.

[243]Anderson and Anderson, supra, p. 157.

[244]Anderson and Anderson, supra, p. 174.

[245]Anderson and Anderson, supra, p. 175.

[246]Anderson and Anderson, supra, p. 175.

[247]Scott, Marshall and Hunter supra, p 63.

[248]Scott, Marshall and Hunter, supra, p. 54.

what would later become the contra army."[249] Upon his return to the U.S. in 1979, Singlaub called for "'sympathetic understanding of the death squads.'"[250] After the visits of Singlaub and others, the right wing in Guatemala began raising campaign funds for Ronald Reagan, "perhaps as much as 10 million dollars." The money was passed indirectly to his campaign through Michael Deaver and an undisclosed campaign committee in California, who had been hired as the Guatemalans' Washington lobbyists.[251] One of the results of this money was that Guatemala's Sandoval was invited to dance at Ronald Reagan's 1980 inaugural ball.[252] By 1982, Singlaub was providing former U.S. military personnel to El Salvador to train the army there in counter-insurgency tactics.[253] Singlaub described his purpose as using private citizens to avoid the 55-military-advisor limit set by

---

[249]Scott, Marshall and Hunter, supra 30.

[250]Scott, Marshall and Hunter, supra 54. In 1984, Defendant Singlaub responded to criticism of the violent activities of some of the Latin American WACL chapters by removing the Mexican group, the Tecos. But other equally extremist groups such as the Bolivians, Guatemalans and the Brazilians, remained. Anderson and Anderson, supra, p. 148.

[251]Scott, Marshall and Hunter, supra, 52-53.

[252]Anderson and Anderson, supra, p. 177.

[253]Singlaub Congressional Testimony, supra, p. 184.

Congress for El Salvador.[254]

In 1982, the USCWF was granted tax-exempt status by the IRS after then-treasurer Albert Koen, then its treasurer, agreed that "'at no time will the USCWF ever contemplate providing materiel or funds to any revolutionary, counterrevolutionary or liberation movement.'"[255] From the beginning, Defendant Singlaub ignored this restriction. In 1984, as he was about to take over the chairmanship of WACL, he stated:

> I am convinced that our struggle with Communism is not a spectator sport. As a result of that view, we have opted for the court of action which calls for the provision of support and assistance to those who are actively resisting the Soviet supported intrusion into Africa, Asia and North America.
>
> The geographic regions of WACL must not only provide support to the freedom fighters who are engaged in combat in their own region, but they must develop plans of action to support the resistance in other regions of the world.[256]

Each chapter's effectiveness would be measured by how well the "plans of action" were carried out.[257]

The Buckley Kidnapping

---

[254]Deposition of John K. Singlaub, March 7-8, 1988 (hereafter "Singlaub Deposition"), pp. 252-3.

[255]Anderson and Anderson, supra, p. 269.

[256]Anderson and Anderson, supra, p. 257.

[257]Anderson and Anderson, supra, p. 258.

On March 16, 1984, William Buckley, the CIA station chief in Beruit, was kidnapped. Buckley was a former associate of Defendant Shackley in Vietnam. In 1978, he worked with Edwin Wilson and Glenn Robinette training Egyptian President Anwar Sadat's bodyguards. He was also an associate of Defendant Quintero's at Mexico's Pemex Corporation in the early 1980s. Oliver North, the director of the anti-terrorism unit at the NSC, responded to the kidnapping by drafting National Security Decision Directive 138. It proposed "CIA-backed and trained teams of foreign nationals to 'neutralize' terrorists known to have struck American or known to be planning such attacks." CIA General Counsel Stanley Sporkin provided a dubious legal opinion stating that the prohibition in Executive Order 12333 against "political" assassinations would not be violated by the new directive. Because of objections from some CIA officials, President Reagan signed a revised NSDD that authorized the creation of a new counterterrorism task force.[258] Using that authorization, North established the Terrorist Incident Working Group (TIWG), an anti-terrorist group that would function outside of the control of the government agencies. According to persons in the Pentagon, Defendant Secord, who was an NSC consultant, headed this group, which was responsible for planning the rescue of hostages held in the Middle East, as well as "neutralizing" terrorist threats from Iran, Libya and Nicaragua.[259]

It is believed that it is from this group that Defendant Secord coordinated the Enterprise's "anti-terrorist" activities with -- among others -- North, persons at the

---

[258]Woodward, Veil, supra, pp. 361-2.

[259]Washington Post, February 17, 1987; Miami Herald, March 8, 1987; Cockburn, supra, p. 195.

FBI, and Defendant Shackley. It is also believed that it was under this rubric of "anti-terrorism" that the Enterprise conducted its secret operations against the government of Nicaragua and Eden Pastora, whom it viewed as a communist ally of Nicaragua.

The "Ikle" Panel

In approximately March of 1984, it became clear that Congress was going to bar government agencies from providing any military or paramilitary assistance to the contras. Andrew Messing, an Enterprise associate and the director of the National Defense Council, and Defendant Singlaub contacted Fred Ikle, the under-secretary of Defense, and suggested that Ikle consult a number of private covert operations specialists to discuss the generic problem of "the Communist threat throughout Central America," and a multi-dimensional approach to conflict which included a military, political and economic response. Ikle already had a relationship with Singlaub because of reports Singlaub provided on his trips to Central America and was implementing Singlaub's suggestions before the panel was convened.[260]

In May of 1984, based upon Messing's and Singlaub's recommendations, the panel was convened. Singlaub was the chairman and other members were: Singlaub, Andrew Messing, then of the Conservative Caucus, Defendant Shackley, Harry (Heinie) Aderholt, Edward Luttwak, retired General Edward Lansdale, Seal Doss and Col. John Waghelstein, former head of U.S. military group in El

---

[260]Deposition of Andrew Messing, December 30, 1987 (hereafter "Messing Deposition"), pp. 33-40 and 63; Deposition of John K. Singlaub (hereafter "Singlaub Deposition"), p. 35.

Salvador.[261]

At these meetings, the privatization of the war against Nicaragua was discussed. It is believed that the panel drafted a seven-page report -- which is not classified -- on the steps which should be taken to enable private paramilitary groups to take over operations in Central America.

Formal U.S. Support for the Contras

On March 9, 1981, on the recommendation of CIA Director William Casey, President Ronald Reagan issued a formal presidential finding authorizing covert CIA activities against the Nicaraguan government.[262] In June of 1981, Casey assigned Vincent M. Cannistraro to supervise the CIA operation to supply funds and military equipment to the contras.

To conceal his involvement in the efforts against the government of Nicaragua, Casey -- as had WACL -- turned to the Argentines. On November 1, 1981, Director Casey met in Washington with General Leopoldo F. Galtieri, the chief of staff of Argentina's army who would later become its president. Galtieri agreed to allow Argentina to train and direct the Nicaraguan rebels, known as contras, if the U.S. would provide money, weapons and other military equipment.[263]

---

[261]Deposition of Andrew Messing, December 30, 1987 (hereafter "Messing Deposition"), p. 5.

[262]Washington Post, May 8, 1983; "Reagan Advisers Ran 'Secret Government,'" Miami Herald, July 5, 1987.

[263]Scott, Marshall and Hunter, supra, p. 11. Edgar Chamorro stated in his affidavit dated September 5, 1985, and submitted to the World Court, that General Vernon

On November 16, 1981, at a meeting of the National Security Council, the CIA recommended a covert paramilitary operation against what was described as "the Cuban-Sandinista infrastructure in Nicaragua and elsewhere in Central America." The operation was to employ a force of 500 exiles, ostensibly to interdict alleged Nicaraguan government arms shipments to guerrillas in El Salvador, but was essentially a covert operation to harass the Nicaraguan government.[264] On November 23, 1981, President Reagan signed National Security Decision Directive (NSDD) 17, which provided the necessary funds for the contras. It authorized $19.95 million for the CIA to "work with foreign governments as appropriate" to build a paramilitary force against the Nicaraguan government.[265] The money went to the Argentinians.

NSDD 17 was not provided to Congress. On December 1, 1981, CIA Director Casey fraudulently presented a second NSDD to the Congressional intelligence committees stating that the operation was strictly limited to attacks against the Cuban presence and the Cuban-Nicaraguan support infrastructure such as military installations and bridges, and that civilian casualties would be avoided.[266] In practice, however, contra

---

Walters arranged for the Argentinian military advisors.

[264]Washington Post, March 10, 1982. Steven Emerson, Secret Warriors: Inside the Covert Military Operations of the Reagan Era (G.P. Putnam's Sons, 1988) (hereafter "Emerson"), p. 121.

[265]Washington Post, May 8, 1983.

[266]Peter Kornbluh, Nicaragua: The Price of Intervention, (Institute for Policy Studies, 1987) (hereafter

operations, both by design and with reckless disregard, resulted in high levels of non-combatant civilian casualties in violation of Common Article 3 of the Geneva Conventions.[267]

Casey's operations in alliance with the Argentinian Army continued until December of 1982 when U.S. support for the United Kingdom during the Falkland Islands conflict caused Galtieri to withdraw his military advisers.[268] During that time, the main contra force, the September 15th Legion headed by former Somoza National Guard Colonel Enrique Bermudez, was recognized by the U.S. government as "a terrorist group."[269] But in August of 1981, associates of William

---

"Kornbluh"), p. 23. This finding was later modified, in September of 1983, to adopt a new and broader rationale for contra aid: "covert aid was intended to pressure the Sandinistas [Nicaraguan government] to negotiate a treaty with nearby countries." Iran-Contra Congressional Report, supra, p. 35.

[267]Kornbluh, supra, p. 39-41, citing former CIA Director Stansfield Turner's testimony before Congress; Miami Herald, October 20, 1984, quoting CIA official Duane (Dewey) Clarridge.

[268]Kornbluh, supra, p. 32; Washington Post, Dec. 18, 1982.

[269]U.S. Department of Defense Weekly Intelligence Summary (WISUM), July 14, 1982. One Nicaraguan, Pedro Diaz, swore out an affidavit to the Honduran Army on August 20, 1982, against the contra leader, Ricardo Lau Castillo, charging that he sent out his men to commit robberies and assaults and ordered some of them killed so

Casey organized this terrorist group of mostly former National Guardsmen into a counter-revolutionary army which was labelled the Nicaraguan Democratic Front (FDN). A year later, for public relations purposes, a civilian directorate of FDN was formed. Defendant Adolfo Calero was named chief political representative, with Col. Enrique Bermudez heading the military operations.[270]

By 1982, the National Security Council (NSC) was already taking an operational role. In early 1982, Felix Rodriguez, a former CIA officer and associate of the Enterprise, developed a five-page proposal for an elite mobile strike unit called a Tactical Task Force to attack Nicaraguan targets. In March of 1983, Rodriguez met with Donald Gregg, a former CIA and NSC officer who is now Vice President Bush's national security advisor, and Richard Stone, the administration's Central American negotiator, to discuss the alleged threat of Nicaraguan-based rebels in Central America. Rodriguez left his plan with Gregg and Stone. Gregg forwarded it to Robert McFarlane, then deputy NSC adviser, who provided it to

---

that he could keep the money himself during their regrouping period in Guatemala. Lau, who was known as Somoza's "hatchet man" and torturer, has been implicated along with d'Aubuisson in the murder of Salvadoran Archbishop Oscar Romero. Dickey, supra, pp. 82-3 and 88 and notes.

[270]Tom Barry and Deb Preusch, The Central American Factbook, (Grove Press, Inc., 1986) (hereafter "Barry and Preusch"), pp. 277-278. A 1985 study by the Arms Control and Foreign Policy Caucus of the U.S. Senate revealed that 46 of the FDN's 48 military leaders had been members of Somoza's National Guard. Id.

his aide, Lt. Col. Oliver North. It was then approved by National Security Adviser William Clark, and Rodriguez went to El Salvador to attempt to implement it.[271]

Israel also participated in the covert operations against Nicaragua, essentially acting as a cut-out for the Casey operation. By the end of 1983, Israeli military advisers were training contra forces to launch attacks against the government of Nicaragua. Beginning in 1982, they were supplying military equipment to the contras.[272]

Beginning of the Southern Front

In June of 1981, Eden Pastora, a former Sandinista commandante and member of the Nicaraguan government, left Nicaragua for Panama to attempt to persuade President Omar Torrijos, along with Fidel Castro, to exert political influence over the Sandinistas. At the time of Torrijos' death in late 1981, Pastora was in Cuba discussing his initiative with Castro. The unexpected death of Torrijos ended Pastora's plan, and he left for Costa Rica, where he had his first meetings with the CIA.[273] In early 1982, after meetings in Mexico which included Duane Clarridge, then CIA Latin American Director and later the head of the CIA's counterterrorism unit,[274] Pastora and

---

[271]Emerson, supra, pp. 125-8

[272]Emerson, supra, pp. 122-123.

[273]Deposition of Carol Hernandez Prado, May 5, 1987 (hereafter "Prado Deposition"), pp. 21-2. Prado was Pastora's chief deputy until 1986.

[274]Deposition of Eden Pastora, May 6, 1987 (hereafter "Pastora Deposition,"), p. 6; The National Security Archive, The Chronology: The Documented Day-by-Day Account of the Secret Military Assistance to Iran and the Contras

the CIA agreed to work together against the Nicaraguan government with the CIA providing economic and military aid. The CIA provided Pastora with $150,000 a month without a change in the Presidential Finding.[275] In April 1982, Pastora announced his break from the Sandinistas.[276] In September 1982, he and Alfonso Robelo, a millionaire agri-businessman from Nicaragua, formed the Democratic Revolutionary Alliance (ARDE).[277]

On December 21, 1982, Congress passed the first Boland Amendment to the Defense Appropriations Act which barred the use of any funds appropriated in that bill, which included CIA funding, for the purpose of overthrowing or destablizing the government of Nicaragua.[278] In defiance of this directive by Congress, Casey, however, continued to supply the contras with arms and ammunition until the summer of 1984.[279]

(hereafter "The Chronology"), p. xiii.

[275]Pastora Deposition, supra, p. 10. Defendant Jones testified that in 1982, he was told by Popo Chamorro, one of Pastora's commanders, that they were being supplied by the CIA, and that his activities were agency-supported. Jones Deposition, supra, pp.34-6. Jones believed Pastora had approximately 5,000 troops at his peak. Id., p. 87.

[276]Prado Deposition, supra, p. 22.

[277]Iran-Contra Congressional Report, supra, p. 32; Kornbluh, supra, p. 28.

[278]P.L. 97-377.

[279]Testimony of Adolfo Calero, Joint Hearings on the Iran-Contra Investigations, May 20, 1987 (hereafter "Calero Testimony"), p. 13; Prado Deposition, supra, p. 30. The

In May of 1983, ARDE began armed combat under the direction of the CIA.[280] Supplies were dropped in to them in Guanacaste, a province on the west coast of Costa Rica, near the farm of the Cuban-American Aldolfo Jiminez, where they were training.[281] Defendant Hull was their CIA contact, along with a Colombian named "Armando." By July of 1983, and possibly earlier,[282] the CIA was supplying ARDE with arms. One shipment contained 500 AK-4 rifles sent from Israel via Venezuela

---

CIA contact for the Costa Rican-based contras was a man named Ivan, although Dewey Clarridge and persons identified as Armando and Carlos were also involved. Id., pp. 30-31. The Senate Intelligence Committee, after a visit to Central America by Senator Leahy and staff, reported that the covert action program was "growing beyond that which the Committee had initially understood to be its parameters." Iran-Contra Congressional Report, p. 33, n. 23.

[280]Pastora Deposition, supra, p. 12-17.

[281]Pastora insisted on the southern front in Costa Rica as a geographical base. This posed a problem for the U.S. Administration which claimed that its only purpose in aiding the contras was the interdiction of arms to El Salvador in the north. Iran-Contra Congressional Report, p. 32.

[282]William Crone testified that he was involved in air drops of military supplies, including AK-47 rifles, pistols and ammunition, as early as the Spring of 1982. Deposition of William Crone, January 6-7, 1988 (hereafter "Crone Deposition"), pp. 169-170.

to Costa Rica.[283] By April 1984, the CIA was funnelling $400,000 per month to ARDE.[284]

Certain persons in the CIA suggested blowing up bridges in Nicaragua as early as the fall of 1983,[285] when according to classified CIA briefings to Congressional intelligence committees, the proposed 500-man force had reached a strength of 8,000.[286]

At the same time, the CIA was forming a single contra operation in Honduras by throwing out of the movement those who did not agree to join, including Brooklyn Rivera and Fernando ("El Negro") Chamorro. Chamorro moved his group to Costa Rica and joined Pastora.[287]

Supplying the Contras: NSC Staff Members Begin to Violate the Law

In February of 1982, Robert McFarlane, then deputy National Security Advisor, set up a secret military cooperation program to hide the paramilitary and supply activities of Casey and his associates in Central America from Congress which both utilized the Enterprise and foreshadowed its later activities. McFarlane went to David Kimche, then director general of the Israeli Foreign Ministry and set in motion the relationship that would lead to the Iran-contra scandal. In 1982, Israel began selling

---

[283]"Pulling a CIA Plug," Newsweek, September 3, 1984.

[284]Chronology, supra, p. 55.

[285]Pastora Deposition, supra, p. 16-17, 24.

[286]New York Times, June 14, 1983.

[287]Pastora Deposition, supra, pp. 5-6.

millions of dollars' worth of military equipment to Honduras, Guatemala and Costa Rica, some of which was passed through to the contras and providing trainers for the Honduran and Guatemalan governments. In return, the White House agreed to increase aid to Israel to offset the costs Israel had accrued.[288]

In addition, Israel provided the contras with millions of dollars' worth of Soviet-made weapons that it had captured from the Palestine Liberation Organization when it invaded Lebanon in 1982 in exchange for favorable prices on American-built fighter planes. Defendant Secord, then deputy assistant secretary of defense for international security affairs in the Near East, Africa and South Asia, was the person who, in his private capacity, made sure the weapons reached the contras. The weapons were shipped to the CIA warehouse in San Antonio, where the serial numbers were removed, and then went on to the contras.[289]

Operation Elephant Herd: Transfers of U.S. Government Equipment to the Contras

In the summer of 1983, William Casey began secret preparations to assure continued resources for the contras if Congress cut off aid. On July 12, President Reagan directed that the Department of Defense support those efforts with "free-of-charge" transfers of equipment to be stockpiled by the CIA. On July 13, 1983, the CIA requested that the Pentagon provide $28 million of military equipment to the contras by declaring it "surplus" so that it could not be counted against any Congressionally imposed ceilings. The scheme was code-named "Operation

---

[288]Emerson, supra, pp. 122-3.

[289]Emerson, supra, p. 123.

Elephant Herd". "In short," according to the Iran-Contra Congressional Report, "money appropriated by Congress for one purpose would be used for another, bypassing any limits Congress might place on CIA appropriations, such as the then-pending Boland-Zablocki bill."[290]

The Pentagon refused on the basis that it was a violation of the Economy Act, which prohibits one agency from transferring funds or assets to another agency without charging it, and because the 1981 finding signed by President did not justify even a paid transfer of equipment to the CIA. Casey obtained a new finding on September 19, 1983, authorizing covert actions to destabilize the government of Nicaragua. The CIA submitted a request for equipment valued at less than $12 million, which was approved.[291]

A total of 40 attacks against Nicaraguan targets took place in 1984 using Elephant Herd material, including speedboat attacks on the ports of San Juan del Sur and Corinto.[292]

Pentagon's "Black" Aviation Operation: The Enterprise Takes Hold

In 1981, the Pentagon formally established Seaspray, a joint Army-CIA "black" aviation unit ostensibly run by the Army's Special Operations Division. Its mission was to provide quick, clandestine transportation of men and supplies for covert operations. It was part of a new Army program to conduct "covert operations . . . in support of the Office of the Joint Chiefs of Staff." It was integrated

---

[290]Iran-Contra Congressional Report, p. 34-5.

[291]Emerson, supra, pp. 133-4.

[292]Emerson, supra, p. 134.

into a CIA proprietary company, Aviation Tech Services. Seaspray supported signal intelligence operations, transported foreign leaders, ferried Delta soldiers, assisted in drug busts and worked with other counter-terrorism forces in exercises and rescue operations. Congress was never notified of its operation.[293] By 1982, it was operating in Central America.

In 1982, the Army's Special Operation Division decided to establish a "black" commercial transportation capability. Defendant Richard Secord, who was still in the Air Force, claimed to be instrumental in setting it up. In September of 1982, Richard Gadd, an Enterprise associate, retired from the Air Force and created Sumairco, a subsidiary of Vinnell Corporation of Nebraska, to specialize in that operation.[294] (Vinnell, a defense contractor, also has an ongoing contract to train the Saudi Arabian National Guard.) After obtaining a $1-million, noncompetitive contract from the Army, Gadd rented his planes and trained pilots through Southern Air Transport, a CIA proprietary. He participated in the invasion of Grenada[295]

---

[293]Emerson, supra, pp. 45-7.

[294]Vinnell was a large defense contractor and had trained the Saudi National Guard. Gadd left Vinnell after several months, taking Sumairco with him. Emerson, supra, pp. 143-4.

[295]Gadd used two pilots for this operation which involved flying helicopters from California to Barbados for use by the CIA. One of the pilots Gadd hired was Wallace "Buzz" Sawyer, Jr., who was later killed in the arms-laden C-123 cargo jet owned by Southern Air Transport which crashed inside Nicaraguan territory. Emerson, supra, p. 145.

and intelligence mission in Honduras. In May of 1983, after Secord was forced into retirement because of his dealings with EATSCO and the Enterprise, he rented office space from, began to work with, and steer military business to, Gadd. In October of 1983, the Army attempted to hire Secord for the joint CIA-Army aviation unit. The CIA, however, refused to give him an "operational" clearance because of the Justice Department's continued investigation of his affiliation with Edwin Wilson.[296]

Despite his lack of a CIA clearance, Secord became a consultant to the NSC and a member of the Pentagon's Special Operations Advisory Board, a group of retired senior military officers who met regularly to discuss top-secret special operations issues. In those positions, he became well-acquainted with Oliver North, whom he had known since 1981 when they worked together on the sale of AWACS radar planes to Saudi Arabia.[297] By 1983, the two were discussing the benefits of using private companies as commercial cut-outs for such military operations.[298] Lt. Col. Oliver North had worked on the planning of the Grenada invasion and became aware of the opportunities that a private "black: transport capacity, such as Gadd's operation could provide. Defendant Secord became

---

[296]Testimony of Richard V. Secord before the Joint Congressional Committees, May 5-8, 1987 (hereafter "Secord Congressional Testimony"), Exhibit 22 (memorandum from Michelle A. Martin, CIA Office of General Counsel, to Carl Darby, Office of Security, October 6, 1983).

[297]Steven Emerson, supra, pp. 146-7.

[298]Emerson, supra, p. 146.

"North's tutor on these matters" during this time.[299]

In late July of 1983, the Army Special Operations Division opened the "Yellow Fruit" operation under the guise of Business Security International to carry out a number of clandestine operations. The top Army leadership was not aware of the Yellow Fruit operation or BSI. One of its first jobs was to train Honduran-based contras in Florida to pilot small planes for raids on Nicaraguan industrial facilities. Another was to train contra pilots for high-risk bombing runs.[300]

Shortly after BSI opened, two Yellow Fruit agents received a binder from Rudy Enders containing a plan to supply weapons and money to the contras if Congress cut off funds.[301] The plan had three components: (1) the funneling of weapons to the contras through inflated sales of equipment to countries, including Honduras, Guatemala, Brazil and Argentine; (2) the use of offshore bank accounts for the contras; and (3) the construction of air strips in Costa Rica so that a southern front could be developed. One of the construction sites would be the farm of Defendant John Hull. By the fall of 1983, a Yellow Fruit operative had visited areas on the southern front to take pictures of possible landing zones.[302] Yellow Fruit's operations, however, were abruptly aborted when its key members were fired and eventually court-martialed for

---

[299]Emerson, supra, p. 146.

[300]Emerson, supra, p. 151.

[301]Emerson, supra, p. 152.

[302]Emerson, supra, p. 152-3.

misuse of funds.[303]

Nonetheless, the schemes to militarily assist and obtain legal and illegal funding for the contras continued. The U.S. Congress was not cooperative, however. In October of 1983, it placed a $24-million cap on contra funding and barred the CIA from avoiding the cap by using any of its contingency funding for the contras. The CIA and the National Security Council responded by mining Nicaraguan harbors and attacking fuel tanks. It was hoped that these efforts, combined with an attack by Pastora on San Juan del Norte, would result in the installation of a provisional government prior to the time funds ran out.[304] In early 1984, it became publicly known that Dewey Clarridge, then a high-level CIA official, had conceived of and implemented the plan to mine the harbors of Nicaragua, thereby causing an international uproar that resulted in indications by Congress that it would cut off aid to the contras.[305]

In 1983, there was also prepared and distributed to the contras a manual advocating the "neutralization" of Nicaraguan government officials with the Selective use of violence." The assassination manual, which was revealed in the press in October of 1984, was in direct conflict with Executive Order 12333 signed by President Reagan in 1981 which prohibited political assassinations. Six CIA officials were disciplined for their improper participation in the preparation and distribution of the manual. One of them

---

[303]Emerson, supra.

[304]Iran-Contra Congressional Report, supra, pp. 35-6, citing, e.g., North/Menges Memo, dated October 19, 1983, entitled "Special Operations: Nicaragua."

[305]Cockburn, supra, pp. 10-1.

was Joseph Fernandez (also known as Tomas Castillo), who was subsequently promoted to CIA station chief's position in San Jose, Costa Rica and played an important role in the Enterprise's operations there. Fernandez, who was then stationed in Honduras, had worked with the contras since at least 1982.[306]

The mining of Nicaraguan harbors and the distribution of the manual violated international and United States law. In June 1986, the United Nations' International Court of Justice ruled that the United States had violated Nicaragua's rights and owed reparations for these violations. The Court also ruled that the counter-allegations of the United States that Nicaragua was smuggling arms to El Salvador were not supported by the evidence. The United States, after arguing unsuccessfully in the jurisdictional phase of the World Court proceedings that the Court lacked jurisdiction, refused to accept the jurisdiction of the Court, an action for which it has been widely criticized.

Singlaub Supplies Weapons and Explosives

In early 1984, it is believed that Defendant Singlaub organized a shipment of lethal weapons, ammunition and C-4 explosives to the contras. Some of the C-4 was shipped to the contras operating on Defendant Hull's ranch and were later used in the construction of the bomb which Defendant Galil used to blow up the La Penca press conference.

Shortly thereafter, the Fulton County Police Department began to investigate the movement of weapons and C-4 through Atlanta to Central America by a company called Overseas Press Service. Defendant Singlaub was a "consultant" for Overseas Press who knew

---

[306]The Chronology, supra, pp. 20-1.

W. Dennis Suit and Walter Gold, two of the company's directors. Gold had earlier helped the American Security Council, a conduit for private aid to the contras, make a pro-contra documentary. E.E. Nixon, Fulton County's chief of detectives, contacted the FBI in the summer of 1984 about his discovery, but said that he didn't want to continue if he was going to "step on the toes" of any government agency. The FBI conducted its own investigation, but it was quickly closed. Most of the documents are now classified as "national security" documents.[307] Nixon stopped his investigation after a personal call from North.

Hull and Jones: Supply of the Southern Front

Meanwhile, several of the defendants became active in unlawfully supplying military assistance to the contras on behalf of the Enterprise. Defendant John Hull was a CIA operative who was known as such to Jose Blandon, formerly Panama's chief of political intelligence, as early as 1981.[308] Hull assisted the contras in the southern front by

---

[307]"Atlanta Firm Linked to Contra Network," In These Times, April 14, 1987; "North's 'Security Officer' Linked to Alleged Arms Network," In These Times, August 19, 1987; telephone conversation with FBI Office of Legal Counsel, March 28, 1988.

[308]Deposition of Jose Blandon, February 24, 1988 (hereafter "Blandon Deposition"), p. 17. Jeffrey Feldman, an assistant U.S. attorney who attempted to investigate Hull in 1986, was also told by the CIA station chief that Hull was an operative prior to 1984. Deposition of Jeffrey Feldman before the Joint Iran-Contra Congressional Committees, April 30, 1987 (hereafter "Feldman Deposition"), pp. 52-53, 100.

providing supplies from his farm in northern Costa Rica,[309] and using his plane to fly supplies and men into airstrips near the Costa Rican-Nicaraguan border and to contra bases.[310] These supplies included arms.[311]

---

[309]Prado Deposition, supra, p. 29. Pastora was having difficulty with Defendant Hull and Dewey Clarridge, a CIA officer frequently at Hull's farm, because he would not join the FDN, led by Defendant Calero. Pastora said the CIA wanted him to blow up bridges, which Pastora considered to be a terrorist act. Pastora Deposition, supra, p. 17.

[310]Crone Deposition, supra, pp. 151-152.

[311]Crone Deposition, supra, p. 165. Jose Coutin testified to Hull's receipt of military equipment for the contras in 1983. Deposition of Jose Coutin, March 9, 1987 (hereafter "Coutin Deposition"), p. 42. Defendant Jones testified to the receipt of 5,000 rifles, 5 million rounds of ammunition, hand grenades, Claymore mines and mortars. Deposition of Bruce Jones, December 3, 1987 (hereafter "Jones Deposition"), p. 113-114. George Morales, a drug dealer who also ran an air charter business, testified that he had delivered 40 M-79 grenade launchers from Miami to Ilopango Air Force Base in El Salvador for Defendant Hull in 1983 without the proper export license; Defendant Jones testified to storing M-79s. Deposition of George Morales before the Senate Foreign Relations Subcommittee on Terrorism, Narcotics and International Communications (hereafter "Morales Deposition") pp. 19, 56; Jones Deposition, supra, p. 93. Panama's chief of political intelligence also testified that prior to his meeting with Hull in December of 1983, his intelligence resources told him that Hull was providing

Defendant Hull was aided by two neighbors, Defendant Bruce Jones, who lived on property owned by Lacuna Co., one of Hull's operations,[312] and William Crone, another North American living with Hull.[313] Hull, Crone and Jones helped the contras in receiving air drops of military and other supplies.[314] Not surprisingly, one of the contras frequently found at Hull's ranch was Ian Kniloch, the chief of the contras' air logistical support operation.[315]

As part of their activities in Costa Rica, Defendants Hull and Jones worked with a related, right-wing paramilitary group called Hueta Norte which trained on Hull's ranch. Jones later described it as an organization he hoped to use as a Costa Rican death squad.[316] Jones also participated in "operational patrols" with Pastora's troops and stated that he was "armed and prepared for whatever came along on, perhaps, four occasions."[317] His

---

arms to the contras. Blandon Deposition, supra, pp. 16-17 and 25.

[312]Jones Deposition, supra, 12-14.

[313]Crone Deposition, supra, pp. 150-155. Defendant Jones testified that he was initially approached by Harold Martinez, who worked with Pastora and Popo Chamorro, in 1982 to help develop the logistics infrastructure. Jones Deposition, supra, pp. 29-34.

[314]Crone Deposition, supra, pp. 169-170.

[315]Prado Deposition, supra, p. 34.

[316]Anderson and Anderson, supra, p. 268.

[317]Jones Deposition, supra, pp. 43-44, 55-56. Jones stated in an interview in 1986 that while on patrol with

code name on those operations was "Flaco Verde."[318]

Certain persons in the U.S. embassy in Costa Rica were fully aware of Hull's role and, in fact, coordinated Hull's operations. Prior to every air drop of supplies, an employee in the political section of the embassy would communicate a message through Hull's office that Hull or Crone should contact the embassy and ask for "Thomas," which was a code name for the supply operation and referred to several different people. A "Thomas" would then provide information to Hull or Crone about the air drop.[319] Hull and Crone would then fly the contras to the drop zone and help pack and transport the supplies.[320] Supplies also went to air strips in Guanacaste Province on the western side of Costa Rica.[321] In addition, certain persons in the embassy paid for various "safe houses" used by Hull and the contras.[322]

Defendant Jones has stated that between May 1982 and May 1984, there were approximately 100 deliveries of arms and supplies to the contras coordinated by

---

the contras, he fired his rifle and engaged in combat. John Lee Anderson, "A C.I.A. Man in Nicaragua," Life Magazine, February, 1985 (hereafter Life Magazine Interview).

[318]Jones Deposition, supra, p. 180.

[319]Crone Deposition, supra, pp. 155-156, 173-180.

[320]Crone Deposition, supra, pp. 181-182.

[321]Jones Deposition, supra, p. 95.

[322]Crone Deposition, supra, pp. 249-252.

Defendants Hull and Jones.[323] At times, Jones, who testified that he was responsible for Pastora's Tango and Luna Rojas bases, kept M-79 grenade launchers and other military equipment in his warehouse, which he provided to the contras for operations inside Nicaragua.[324] He stated that the arms were kept in various warehouses around northern Costa Rica and distributed from there.[325] Jones was also aware that in early 1984, C-4 explosive was transported from San Jose to the southern front.[326] In November or December of 1984, Jones traded an Uzi submachine gun to a member of Pastora's forces for four pounds of pre-prepared C-4 explosive.[327]

The arms sometimes came from El Salvador where Defendant Quintero was operating. Quintero met with Eden Pastora in early 1984 to offer financial and logistical assistance. In March of 1984, two pilots who were flying military supplies to ARDE for Quintero were killed.[328]

Defendant Jones was also involved in the actual shipment of military supplies for the contras from the United States to Costa Rica, a violation of the Arms Export Control Act and other state and federal laws.

---

[323]Jones stated, "We'd know the date the planes were coming and we'd wait for them. We'd unload the ships in five or ten minutes -- they never turned their engines off." Life Magazine Interview, supra.

[324]Jones Deposition, supra, p. 92-94.

[325]Jones Deposition, supra, p. 94-95.

[326]Jones Deposition, supra, p. 62.

[327]Jones Deposition, supra, p. 68.

[328]Prado Deposition, supra, p. 45.

Jesus Garcia, who had been recruited by Defendant Tom Posey to aid in the contra resupply effort, stated that in 1985, he saw crates containing C-4 explosives in Defendant Jones' hotel room in a Howard Johnson Motel in Miami.[329] Defendant Jones also trained contra recruits and planned and participated in attacks on Nicaragua.[330]

The defendants and the persons within the U.S. embassy and the CIA with whom they were in contact were fully aware that their activities were in violation of Costa Rica's neutrality laws.[331] On March 24, 1984, a DC-3 resupply plane carrying armaments en route from El Salvador to Pastora's Tango base in Nicaragua crashed in northern Costa Rica.[332] All seven men aboard the plane died, and some of them appeared to be Americans. The pilot was Renato Torrealba, a Nicaraguan. The first to arrive at the scene were Defendants Hull and Jones, one Phil Holtz (or Holts) and two CIA contract agents and

---

[329]"Obstruction at Justice," Village Voice, March 31, 1987.

[330]Life Magazine Interview, supra. Jones was training for an ambush on two Nicaraguan garrisons when he was interviewed. The attacks took place a week after the interview. Life apparently went with Jones on five contra missions; Prado Deposition, supra, p. 33. Jones was subsequently declared a "persona non grata" by the Costa Rican government and forced to leave the country. "U.S. Citrus Farmer Declared 'Persona Non Grata,'" Tico Times, March 1, 1985.

[331]Jones Deposition, supra, p.64.

[332]Jones Deposition, supra, pp. 96-101.

some of Pastora's men,[333] who wanted to locate the plane before Costa Rican officials did in order to dispose of the sophisticated navigational gear on board and the bodies. In an effort to conceal the identity of the dead, Holtz ordered that the teeth and jaws be removed. The bodies were then burned and buried, probably in Nicaragua.[334] Later, Holtz asked Pastora to dig them up and put them in plastic bags. They were then turned over to Holtz' associates and taken away in a plane.[335]

The United States Army recently revealed that it possesses documents on the crash, but they are classified "secret." The DC-3 had been confiscated during a narcotics investigation in 1983 and was released from FAA custody without going through the usual paperwork because the FAA official was told that it would be used for military purposes.[336]

The Costa Rican government was aware of the activities on Defendant Hull's ranch. The Directorate of Intelligence and Security (DIS), the Costa Rican internal

---

[333]"Army Has Secret Files on Crash," Newsday, December 24, 1987; Jones Deposition, supra, p. 98; Prado Deposition, supra, p. 46.

[334]"Army Has Secret Files on Crash," Newsday, December 24, 1987.

[335]Pastora Deposition, supra, pp. 60-62. Defendant Jones stated that a decision was made to bury the bodies and mark the graves so that later they could be exhumed for a "decent Christian burial, with the patriotic honors that they merit." Jones Deposition, supra, p. 111.

[336]"Army Has Secret Files on Crash," Newsday, December 24, 1987.

intelligence and security force, conducted surveillance on Hull's ranch from early January to mid-April of 1983, at which point someone ordered the surveillance to stop.[337] The Panamanian government also knew of Hull's role in assisting the contras. In December of 1983, Jose Blandon, Panama's head of political intelligence, with the assistance of Pastora, met with Hull in the home of Daniel Oduber, former president of Costa Rica, to discuss Panama's position that Pastora should return to Nicaragua peacefully and seek a negotiated settlement with the Sandinistas. Hull was adamant that the Nicaraguan government must be overthrown militarily.[338]

By mid-1983, Defendant Hull was seeking to replace Pastora as the leader of the contras in Costa Rica. In July 1983, Hull, Crone and Luis Rivas, one of Pastora's commanders, traveled to Washington, D.C., to attempt to convince members of Congress that Pastora should not be supported because he was still controlled by the Nicaraguan government.[339] They were driven around Washington by Colonel Joseph Yurko, a retired Army colonel who also owns property in Costa Rica near

---

[337]Deposition of Alberto Guevara Bonilla, May 4, 1987 (hereafter "Guevara Deposition"), p. 32.

[338]Blandon Deposition, supra, pp. 18-20, 25, 29-30; See, also, Testimony of Jose I. Blandon before the Senate Foreign Relations Subcommittee on Terrorism, Narcotics and International Communications, February 9, 1988 (hereafter "Blandon Testimony").

[339]Crone Deposition, supra, pp. 119-126. Crone further testified that "John Hull has expressed, to almost anybody that would listen, that he thought Pastora was a front for the communists." Id., p. 196.

Defendant Hull. One of the offices they visited was that of Senator Daniel Quayle of Indiana, where they met Defendant Robert Owen, at that time a legislative aide to Senator Quayle. Owen contacted other Congressional aides to talk to the group, one of whom was Vaughn Forrest, administrative assistant for Rep. Bill McCollum (R-Fla.).[340] Owen also introduced them to Lt. Col. Oliver North at the National Security Council.[341]

A trip to the Pentagon put the group in touch with the Yellow Fruit operatives. The Yellow Fruit plan, devised at least partially by Defendant Secord, would supply military assistance and equipment to the contras as part of an illegal covert security-intelligence project. By the time Hull left Washington, it was agreed that Yellow Fruit agents would assist in the building of airstrips on Hull's ranch as part of the opening of the southern front, and an operative soon visited.[342] Because of Owen's interest in "finding out about the fighting capability of Pastora and the southern front", Hull and Crone invited him to come to Costa Rica.[343] Owen quickly became an active member of the Enterprise.

In the interim, Defendant Hull recognized that Pastora's support in the U.S. Congress prevented him from taking any immediate steps to supplant Pastora. In

---

[340]Continued Deposition of Robert Owen, February 8-9, 1988 (hereafter "Owen Deposition"), p. 83.

[341]Crone Deposition, supra, p. 136.

[342]Emerson, supra, p. 152.

[343]Crone Deposition, supra, pp. 132-3. By early, 1983, it was clear that North and Owen were working closely with Hull. Iran-Contra Congressional Report, supra, p. 36.

November of 1983, Defendant Hull mediated a dispute between Pastora and Alfonso Robelo, one of Pastora's allies, who wanted to join with Defendant Calero's FDN.[344]

Arrival of the Cuban-Americans

Members of the Cuban-American community had also met with representatives of Somoza after his overthrow in July, 1979. In late 1979 or early 1980, Jose Coutin, a member of the Accion Sindical Independiente and the Cuban Legion, who had received paramilitary training from the CIA, learned of a group that wanted to "go back and fight the communists[in Nicaragua]". The Legion offered to help Maliano Urcuyo, who had briefly held the presidency of Nicaragua after Somoza fled, and was living in exile in Miami. By 1981, the Legion was meeting with Somoza's former military officers, including Pedro Emilio Salazar ("Commandante Bravo"), who were attempting to organize a military effort against the Nicaraguan government.[345]

The Cubans also began to run their own arms supply operation to Costa Rica. On August 6, 1981, Max Vargas, a Nicaraguan exile in Miami who has been identified by the Justice Department as a CIA operative, bought two AR-15 rifles at the Costa Gun Shop in Miami and sent them to Fernando ("El Negro") Chamorro, one of the leaders of a group fighting against the Nicaraguan government from Honduras. Raul Arana, Chamorro's agent in Miami, also told federal investigators that he flew several large arms shipments from Miami to Honduras in

---

[344]Crone Deposition, supra, p. 230.

[345]Coutin Deposition, supra, pp. 14, 16, 26-33.

1981.[346]

In 1981, Defendant Jorge ("Bombillo") Gonzalez, a former U.S. Special Forces member and convicted bomber,[347] and the Cuban Legion operated paramilitary training camps in Florida. Special attention was given to recruits being prepared as a mini-rapid deployment force. One of the people taking "retraining" at Gonzalez' camp was Defendant Felipe Vidal.[348] Vidal, whose father was executed by Fidel Castro in 1964, had been arrested at least seven times in Miami on narcotics and weapons charges.[349] Vidal described his goal as providing a

---

[346]"CIA Role in Arming Contras Seen Larger than White House Has Acknowledged," Wall Street Journal, January 15, 1987.

[347]Defendant Gonzalez served four years in the federal penitentiary in Atlanta for sabotage bombings of U.S. territorial waters of ships owned by companies that did business with Cuba. Gonzalez was also a close associate of Orlando Bosch, who spent five years in a Venezuelan jail for masterminding the bombing of a Cubana Airlines plane which killed all 73 passengers. "Cuban Exiles and 'Refugees' Training for Another Bay of Pigs," Covert Action Intelligence Bulletin, August-September 1980.

[348]Coutin Deposition, supra, p. 21-2 and 38. Vidal's father was a member of the Alpha 66 group and was killed during an expedition to Cuba after the Bay of Pigs. Jones Deposition, supra, p. 81-82. Anderson and Anderson, supra, pp. 248-250.

[349]"State Department Adviser Tied to Misuse of Rebel Aid," Miami Herald, February 16, 1987.

permanent paramilitary infrastructure for an "international anti-communist brigade" to be based in Costa Rica. He soon began training hundreds of men in Miami to fight against the Nicaraguan government.[350]

Defendant Rene Corvo (or Corbo), whom Jose Coutin knew from Brigade 2506, came to Coutin to request financial support for a paramilitary group Corvo was training to go to Nicaragua. Corvo was the leader of a Miami-based Cuban exile group called the Nicaraguan Anti-Communist Aid Committee (CANAC)[351] and a suspect in the bombing of the Continental Bank in Miami.[352] The financial backers of CANAC included Frank Castro, a convicted drug trafficker, and Defendants Francisco (Paco) Chanes and Dagoberto Nunez.[353] Corvo had been given large sums of money to buy military equipment in late 1982 or early 1983 for this project. One of the donors was Teofilo Babun, who had earlier worked with the CIA in Cuba.[354]

Two members of the Cuban Legion went to Costa Rica in early 1983 because of the recruitment efforts of Armando Lopez Estrada and Adolfo Jiminez, a pilot in the

---

[350]Anderson and Anderson, supra, p. 249, citing interview with Felipe Vidal.

[351]"CIA Role in Arming Contras Seen Larger Than White House Has Acknowledged," Wall Street Journal, January 15, 1987.

[352]Feldman Deposition, supra, p. 34.

[353]Coutin Deposition, supra, pp. 43-44.

[354]Coutin Deposition, supra, p. 33-36.

Bay of Pigs invasion.[355] In approximately May of 1983, they were followed by Defendants Corvo and Vidal.[356] After Vidal, Corvo and some other Cuban-Americans from Miami arrived in Costa Rica, they began to approach Pastora. They were already aware of Hull's role in assisting the contras.[357] Vidal and Corvo went to Defendant Hull's farm and asked him to arrange a meeting with Pastora about volunteering the services of a number of their Miami-based, associates.[358] Pastora testified that he had received a letter from Vidal offering to join as a security force and support for the leadership.[359]

Contra leaders Carlos ("Carol") Prado and Adolfo ("Popo") Chamorro, representing Pastora, were invited by Col. Rodrigo Paniagua, a former official of the Costa

---

[355]Jimenez lives in the province of Guanacaste in Costa Rica where he is active in right-wing organizations. "Costa Rica: Seeds of Terror," The Progressive, September 1986. Lopez Estrada was deported from Costa Rica in 1986 after he admitted that he was been hired by the Reagan Administration to train contras in Costa Rica. The Times of London, August 16, 1986.

[356]Coutin Deposition, supra, pp. 33-39. The two Cuban Legion members were Jose Mascia and Pedro Jil (or Hill). Id. at 38. Jil helped finance Defendant Corvo's first mission.

[357]Jones Deposition, supra, p. 81.

[358]Jones Deposition, supra, p. 81. Jones testified that he put Vidal and Corvo in touch with Pastora. Id., p. 84.

[359]Pastora Deposition, supra, p. 20.

Rican Ministry of Public Security,[360] to meet with Col. Carlos Zeledon and Defendant Vidal. Vidal indicated that he was recruiting people to fight with Pastora. Pastora -- who may have feared they were agents of Fidel Castro[361] -- subsequently refused the Cubans' offer.[362] Prado described Defendant Vidal as appearing like a terrorist -- "he spoke about attacks, he spoke about bombs . . . about activities in New York of that type."[363]

The Cuban Americans, however, were integrated into another ARDE camp near El Castillo by the summer of 1983 and were operating with ARDE officers Tadeo and Tonio Vargas.[364] Corvo and Vidal were frequently at the office of, and in the company of, Defendant Hull.[365] By

---

[360]Eden Pastora identified Col. Paniagua as the "principal support" of Defendants Vidal, Corbo and others; and the "main promoter" of the La Penca press conference. Pastora Deposition, supra, p. 37-38.

[361]Jones Deposition, supra, p. 84.

[362]Pastora Deposition, supra, p. 17; Prado Deposition, supra, pp. 35-37. Defendant Vidal was with another Cuban named Paz, who may have been Eduardo Paz. Id.

[363]Prado Deposition, supra, pp. 35-36.

[364]Prado Deposition, supra, p. 37; Jones Deposition, supra, pp. 84-85; Pastora Deposition, supra, p. 17.

[365]Owen Deposition, supra, p. 106; Crone Deposition, supra, p. 226. Crone testified that he saw Corvo in a contra camp inside Nicaragua. Crone Deposition, supra, p. 223. FBI Agent Kevin Currier, who interviewed Corvo in 1986, confirmed that at that time that Corvo was "the second in command at the camp", and that Corvo was

the fall of 1983, Pastora was told by his American contacts that they wanted him to take orders from Defendants Vidal and Corvo. Pastora testified that Vidal and Corvo criticized his political position and his failure to join the "Somocistas" [the FDN].

Subsequently, Vidal and Corvo broke with Pastora and formed a splinter group called M-3.[366] Eduardo Paz and Rafael Perez, two of the Cubans rejected by Pastora, joined M-3, which was composed of Cuban-Americans, Panamanians and Costa Ricans and engaged in military activity.[367] In late 1983, Defendants Vidal and Corvo participated in invasions of Nicaragua, probably from the Atlantic coast and delivered aid to contras operating inside Nicaragua.[368] Two M-3 mercenaries, Ubaldo Hernandez Perez and Mario Eugenio Rejas Lavas, were recruited in 1985, captured in Nicaragua in June of 1986 and sentenced to 30 years. They remain imprisoned in Nicaragua. Hernandez said they were trained in Florida, San Salvador and Costa Rica.[369]

---

recruiting persons in Miami to fight with the contras. Deposition of Kevin W. Currier, FBI special agent, Miami Division, before the House Select Committee to Investigate Covert Arms Transactions with Iran, May 5, 1987 (hereafter "Currier Deposition"), pp. 46-47.

[366]Pastora Deposition, supra, pp. 22-23.

[367]"Group Seeks Cuban Exile Aid in Nicaragua Fight," Miami News, November 24, 1983.

[368]Pastora Deposition, supra, p. 106.

[369]"Two 'Mariel Contras' Languish in Jail," Miami Herald, December 30, 1987.

In late 1983 or early 1984, when several Cuban Legion members inquired as to whether they could join Corvo, the Legion sent Rolando Valdez to Costa Rica to review the situation.[370] While at Defendant Hull's ranch, Valdez saw an American helicopter land and was told by Hull to stay in the house while military equipment was being unloaded.[371]

In mid-1984, three Cuban Legion members, Orlando Ponce, Jose Sosa and Marcellino Rodriguez, went to Costa Rica, where they were met by Defendant Corvo who had supplied them with plane tickets based on false passports. Earlier, Sosa and Rodriguez had seen Defendant Corvo preparing packages of handguns, ammunition and dynamite, all weighing less than 70 pounds, at his house in Miami for shipment on TACA, the El Salvadoran national airline. Col. Paniagua cleared the packages through customs so they would not be opened.[372] It was Eden Pastora's understanding that the Cubans brought supplies to Defendant Hull's farm that were mainly from private individuals.[373]

Ponce, Rodriguez and Sosa stayed in Costa Rica for three weeks during which they were taken to a farm near the Nicaraguan border for training. When they returned, disillusioned, to the United States, they reported that drugs, believed to be cocaine, were being shipped to the United States in shrimp containers by Defendants Nunez

---

[370]Coutin Deposition, supra, pp. 41-43.

[371]Coutin Deposition, supra, p. 42-43.

[372]Coutin Deposition, supra, pp. 57-58.

[373]Pastora Deposition, supra, p. 24.

and Frank Chanes.[374]

The defendants attempted by a variety of ways to get their recruits into Costa Rica, a country with strong neutrality laws. Defendant Corvo and Frank Castro asked William Crone to help bring some Latino men, who were training in a paramilitary camp in Miami, into Costa Rica through some of the air strips Crone knew.[375] Defendant Hull approved the plan.[376] Sometime later, however, one of the "Thomases" from the U.S. embassy warned Crone to stay away from Castro because "he was under investigation for drugs or arms trafficking."[377]

According to Eden Pastora, there were 30 to 40 Cuban-Americans operating on one of John Hull's farms near the Nicaraguan border and taking order from Defendants Corvo and Vidal.[378] In 1985, Defendants

---

[374]Coutin Deposition, supra, p. 60. They reported this allegation and their observation of arms shipping to the Miami Police Special Intelligence Service, and were subsequently contacted by the FBI. Id., pp. 63-69.

[375]Crone Deposition, supra, p. 204.

[376]Crone Deposition, supra, p. 219.

[377]Crone Deposition, supra, p. 221.

[378]Pastora Deposition, supra, pp. 17-9. Carol Prado identified the farm as Monico, where there was also an airstrip. Prado Deposition, supra, p. 37. When Jeffrey Feldman an assistant U.S. attorney from Miami, and Kevin Currier, an FBI agent, came to Costa Rica to investigate the activities of Defendants Hull, Vidal and Corvo in April of 1986, they found that Corvo was leading approximately 50 people from Hull's ranch. Feldman Deposition, supra,

Vidal and Corvo separated. Corvo continued to work in the Nicaraguan-Panamanian-Cuban camp he had established on Defendant Hull's ranch, and Vidal working primarily with the Kisan-South segment of the Miskito Indians, an assignment he was given by Defendant Owen and a man calling himself "Frank Smith." Owen and Vidal controlled all of their funds. Later, after the Iran-contra scandal broke, Vidal became the CIA's liaison to the southern front.[379] In 1986, Vidal was arrested by the Costa Rican Rural Guard with arms and drugs and escaped back to Florida. He later returned to Costa Rica.

La Penca: The Enterprise Attempts to Assassinate Pastora

It is believed that the preliminary discussions concerning a plan to assassinate Pastora were at meetings attended by, among others, Defendants Hull, Vidal, Corvo and Calero in or around January 1984 in Costa Rica, Honduras and Miami. The assassination plans was finalized in a meeting in February 1984 between Vidal, Corvo and Defendant Francisco "Paco" Chanes. Defendants Cruz and Saenz are believed to have been aware of the plan to kill Pastora and were involved in planning the escape of the assassin. They occurred at the same time Pastora was resisting pressure to join forces with the FDN.

It is believed that the following chain of events occurred which led to the La Penca bombing: Defendant Chanes sent Vidal and Corvo to his two Miami partners, Frank Castro and Rolando Martinez. Castro and Martinez

---

p. 53. Currier later interviewed Corvo and confirmed the camp. Currier Deposition, supra, pp. 46-47.

[379]Coutin Deposition, supra, p. 66; "State Department Adviser Tied to Misuse of Rebel Aid," Miami Herald, February 16, 1987.

then sent Vidal and Corvo to Niles Heinz who sent Corvo and Vidal to meet Defendant Ramon Cecilio Palacio, reportedly "chief of security" in Miami for Defendant Jorge Ochoa. In February 1984, Vidal and Corvo met in Miami with Palacio who introduced them to Defendants Raul and Jorge Villaverde, known as the "Gris Brothers."[380] The Villaverdes took Vidal and Corvo to Chile to meet Amac Galil who apparently was working for Chilean Dictator Pinochet where they agreed to pay Galil $50,000 to plan and execute the Pastora's assassination. Between March and May 1984, Galil travelled from Chile, via Panama to Honduras and Costa Rica, where he went to Hull's ranch. Hull met repeatedly with Galil during this time and travelled with Galil to the Nicaraguan border where Galil took numerous photographs of the area. On Hull's ranch, Galil obtained from Hull three kilograms of C-4 explosive which had been smuggled onto the ranch through the efforts of the Enterprise.

During this time, Defendant Singlaub and Robert K. Brown also travelled to Central America with John "I.W." Harper, an explosives expert who had been involved in earlier ventures of the Enterprise in the Middle East. In 1984 and 1985, at the behest of Singlaub and Brown, Harper trained contras in the use of explosives and booby traps. At Defendant Singlaub's direction and with Singlaub's knowledge, Harper taught the contras how to construct bombs that use timing devices and C-4 explosives--the kind that was used in the La Penca

---

[380]Jose Blandon, former head of political intelligence for Panama, described the Villaverde brothers as being "very well known" in the intelligence community. Blandon was aware of their connection to the La Penca bombing. Testimony of Jose Blandon, February 24, 1988 (hereafter "Blandon Testimony"), pp. 66-7.

bombing.[381] Harper trained the contras in the use of C-4 explosives; specifically for use as anti-personnel weapons for the purpose of killing people.[382] It is believed that Defendant Singlaub and Brown provided the services of Harper to Defendant Amac Galil to assist in constructing the C-4 bomb used for the La Penca bombing.

In late 1983 and early 1984, Defendant Hull and the CIA began to pressure Pastora to join the FDN. Contra leaders Alfonso Robelo and Arturo Cruz, Sr., also participated[383] in the campaign to demonstrate that Pastora was the only obstacle to bringing down the Nicaraguan government. Pastora believed that he was being "sentenced to death" by the campaign, and asked for a meeting with the CIA. Clarridge (traveling under the name "Dewey Maroni") came from the United States, but Pastora then asked for a meeting with the head of the National Security Council. In January of 1984, Pastora and Alfonso Robelo met with Robert McFarlane and Clarridge in the White House. Pastora was later told by Arturo Cruz, Jr., that "Oliver North was sick and tired of us."[384]

In March and April of 1984, Pastora was subject to

---

[381]Wheaton Deposition, supra, pp. 160-162, 174. Harper also gave the contras medic training in the event of accidental explosions. Id.

[382]Wheaton Deposition, supra, pp. 163-164, 173-174.

[383]Pastora testified that Cruz had said that Pastora's supplies should be dried up in addition to attempting to undermine his lieutenants. Pastora Deposition, supra, p. 28.

[384]Pastora Deposition, supra, pp. 30-2.

renewed pressure by persons in the CIA to join with the FDN contras based in Honduras. In late April or early May of 1984, Carlos Coronel, Popo Chamorro and Alfonso Robelo met with persons in the CIA in Honduras and promised that Pastora would join with the FDN.[385] However, when Pastora and his military leaders met with General Lopez, head of the Honduran military, in early May to discuss unity with the FDN, no agreement was reached,[386] and ARDE began to undergo a "profound crisis."[387] Pastora was then given an ultimatum from

---

[385]Deposition of Eden Pastora, supra, p. 63 and 66-7. Carlos Prado described a meeting in Tegucigalpa at which Dewey Clarridge, Fernando Chamorro, Popo Chamorro, Carlos Coronel and Alfonso Robelo were present. The discussion concerned a proposed joint military command under the control of General Gustavo Alvarez Martinez, chief of the Honduran army. Alvarez was a graduate of the Argentine Military Academy who was the key Honduran contact with the contras and cover for their activities. Dickey, supra, pp. 115-7. Prado Deposition, supra, p. 50.

[386]Deposition of Eden Pastora, supra, p. 65-6.

[387]Pastora was supported by one faction which criticized the "hysterical pressure of some people for unity with the FDN." They issued a communique on May 22, which stated:

> We consider traitorous to political principles and to the historic project of ARDE those attitudes which try to impose with pressure, manipulations and false expectations, a hasty and irresponsible union, clumsily driven by dark forces, something which

Clarridge and conveyed by Robelo that he must join the FDN by the end of May. Robelo told Pastora that Pastora "would be the only guilty one", and that his story would be "stopped" if he did not join.[388]

During this same period, a meeting was held by Nicaraguan exiles in Miami to discuss the assassination of Pastora. A tape of the meeting was made and obtained by Pastora. The exiles stated that the FDN and the "gringos" intended to "eliminate" Pastora.[389]

> would be artificial and ephemeral. . . . We categorically condemn the permanent manipulation that interested sectors are making against Comandante Eden Pastora Gomez, the principal military and political figure in Nicaragua today, making Pastora seem an obstacle to unity, when in fact Comandante Pastora is the forger of unity not only within ARDE but also among all the Nicaraguan people in their struggle against the current administration.

A spokesman for the Robelo-Chamorro group, the other faction, said that the problem was that Pastora wanted to be the ultimate military head and to purge ex-National Guard members from the FDN." Union with FDN Provokes Differences in ARDE," La Nacion, May 22, 1984.

[388]Pastora Deposition, supra, p. 69; Prado Deposition, supra, p. 51-2.

[389]Transcript of tape provided by Prado; Prado Deposition, supra, pp. 49-50. Prado testified that Rafael Espinoza, a former National Guardsman from Nicaragua, was present at that meeting, and that the remaining

In late March or early April of 1984, Alberto Guevara Bonilla, the driver for Carlos Monge, director of the intelligence and security agency of the government of Costa Rica, was directed by memorandum "dated in San Jose" to make a vehicle available for a man he later described as a "false Danish" photographer at the Civil Guard's main station in Boca Tapada. Guevara was told that the man was doing some journalistic work. The "photographer", who used the name "Per Anker Hansen", was accompanied by a woman. A jeep was provided; the couple left the Civil Guard station, went to the northeast in the direction of La Penca, Nicaragua, and returned six or seven hours later.[390] Guevara recognized the man because Guevara had been ordered by Monge to keep "Hansen" under surveillance in December of 1983 when "Hansen" was seen at the Hotel Costa Rica, the National Park and the Gran Via Hotel.[391] At the Hotel Costa Rica, "Hansen" was with the same woman.[392] In December of 1983, Hansen and a Cuban were detained briefly by Costa Rican authorities.

Approximately 22 days before the bombing at La Penca, "Hansen," the woman and Defendant Hull arrived again at the Civil Guard station in Boca Tapada in an

---

participants were all Nicaraguan. Id., p. 75.

[390]Deposition of Alberto Guevara Bonilla, (date) (hereafter "Guevara Deposition"), pp. 2-5.

[391]Deposition of Fernando Cruz, May 11, 1987 (hereafter "Cruz Deposition"), Exhibit C (report from OIJ Office of Special Affairs to Lic. Mainor Calvo Piedra, OIJ General Director).

[392]Guevara Deposition, supra, pp. 8 and 34-5.

orange Toyota driven by Hull. They again had an order from headquarters, and were provided with a boat. "Hansen" was carrying a silver metal case "eight inches in the width, twelve inches high," a camera and a leather case. They stated that they were going up the river to the northeast.[393] The metal case had a sticker that said "fragile USA Postage" on it.[394] "Hansen" apparently went to the contras' Tango base and attempted to contact Pastora. Pastora talked to him by radio.

> He was hanging around the river, giving out cameras and cigarettes. The guys already were calling him "compa" - companion . . . He asked me for an interview. Since I told him about the impossibility because of the distance. . . . He told me that with that interview we were going to make videotapes and TV programs and that with that we could promote propoganda [sic] and get funds. . . . I told him again that it was impossible because of the distance . . . . In the first days of May he had been travelling all round.[395]

(After the bombing at La Penca, ARDE personnel provided Organismo de Investigaciones Juridicas (OIJ - the Costa Rican FBI) with several video tapes made some

---

[393]Guevara Deposition, supra, pp. 5-8.

[394]Guevara Deposition, supra, p. 20.

[395]Deposition of Eden Pastora, pp. 67-68.

weeks earlier showing Hansen taking photographs of the site of the bombing and its surroundings.[396])

Pastora's refusal to join the FDN contras caused a break with Robelo and a great deal of tension within ARDE. Pastora publicly accused the CIA of attempting to force him to merge with the FDN. As a result, Pastora planned a press conference to announce his break with the rest of ARDE.[397]

On May 29, 1984, the day before the La Penca bombing, Col. Paniagua, the "protector" of Defendants Vidal and Corvo's group of Cuban-Americans in Costa Rica, visited Pastora "nine or eleven times" to pressure Pastora to hold the press conference the following day. When Pastora refused, Paniagua stated that Johnny Campos, the vice minister of public security, wanted the press conference. Paniagua made all of the arrangements for the press conference, and Campos personally persuaded Pastora in a meeting at 1 a.m. on May 30 to have the press conference "because the government of Costa Rica is asking . . . for it." The stated reason was that an earlier press conference by Pastora in Panama appeared to have occurred in Costa Rica, and the Costa Ricans wanted to "prove" that Pastora was not in their country. Pastora finally left for La Penca with 30 or 40 of his group.[398]

---

[396]Cruz Deposition, supra, Exhibit C (report from Office of Special Affairs to Lic. Mainor Calvo Piedra, general director of OIJ).

[397]Prado Deposition, supra, p. 53.

[398]Deposition of Eden Pastora, supra, pp. 38-9, 72 and 75. Pastora testified that he never saw Col. Paniagua, who normally contacted him two or three times a week, Campos or Hull again after the La Penca bombing. Id., p.

That same evening, Monge, Francisco Tacsan, an adviser to the Ministry of Public Security who was associated with a terrorist group called the "babies",[399] and other officials met with various ARDE people, including Pastora and Fernando ("El Negro") Chamorro, in Escazu to discuss security for the press conference. Because the group was leaving from San Jose, Guevara testified that "certain base security measures were required because we were not going to play with the country's sovereignty and we didn't want anything to happen from the starting point to the meeting site."[400]

On the day of the press conference, "Hansen" and the woman were at the Irazu Hotel with the group of journalists going to La Penca.[401] Hansen was traveling with a Swedish journalist named Torbiornsson and a Bolivian named Fernando Prado.[402] "Hansen" brought with

---

72. Prado said Campos told Pastora he wanted the press conference to demonstrate that Pastora was not in Costa Rica as President Monge was in Europe to prove that Costa Rica was neutral. Prado Deposition, supra, pp. 54-5.

[399]Guevara Deposition, supra, pp. 16-7.

[400]Guevara Deposition, supra, p. 35.

[401]Guevara Deposition, supra, pp. 10 and 14; Deposition of Roberto Cruz Sandoval (hereafter "Cruz Sandoval Deposition"), p. 17.

[402]Cruz Sandoval Deposition, supra, p. 61. Prado was also injured. Id.

him a large aluminum case.[403] The journalists traveled by car and then two hours by boat to reach La Penca, arriving at about 7 p.m. The press conference was held in an old wooden house. Because of the darkness, Pastora planned to hold the formal press conference the next day, but the journalists began to ask questions about ARDE's internal problems and the possibility of unity with the FDN. "Hansen" placed the aluminum case on the floor near the spot where Pastora, surrounded by the journalists, was standing. He snapped a few pictures and, muttering loudly that his camera was malfunctioning, backed away from the crowd. An ARDE sentry saw "Hansen" in the bushes outside the house right before the explosion. When challenged, "Hansen" said he had come outside to "take a leak." At 7:20 p.m., the bomb exploded. Eight people died. Others were seriously wounded. Plaintiff Avirgan suffered shrapnel wounds, a mangled hand and burns.[404] He was incapacitated for two months. His business property was also destroyed.

At approximately 8 p.m., ARDE radio reported the explosion. Although several people were killed and others badly injured, no assistance was provided to the injured for approximately four hours.[405] When informed that Americans had been injured, the U.S. Embassy refused to respond. The injured were eventually taken to the hospital in Ciudad Quesada. "Hansen" and Torbiornsson left at 8:30 a.m. the next day and, with the woman, took a cab back to La Gran Via, their hotel in San Jose, where

---

[403]Honey and Avirgan, La Penca, Report of an Investigation, 1985 (hereafter "Honey and Avirgan"), p. 6.

[404]Honey and Avirgan, supra, p. 7.

[405]Cruz Sandoval Deposition, supra, p. 30.

"Hansen" immediately checked out saying he was going to Miami. Because Costa Rica did not close the borders for 48 hours, "Hansen" was able to leave.[406]

Defendant Owen was in Costa Rica staying at the San Jose apartment of Defendant Hull on the night of the La Penca bombing with Hull, Phil Holtz and some unidentified Nicaraguans. Owen had been sent on a trip to Costa Rica and Honduras by Oliver North to meet with Defendant Hull, Holtz and various contras to assess the "needs" of the contras if their U.S. support funds were cut off. Owen was accompanied on his trip by Vaughn Forrest, administrative assistant to Rep. Bill McCollum (R-Fla.).[407]

Defendant Owen testified that at 3:30 a.m., three Nicaraguans associated with Pastora came to wake Defendant Hull and ask that he go to La Penca to pick up the wounded. Hull called Holtz and was advised not to go.[408] At about 5 a.m., he called Bill Crone, who was also in San Jose that night and had a plane available, and "warned" Crone that if someone called him to pick up the wounded, Crone should not go "because it may be a trap or I might get in trouble, or something."[409]

---

[406]Honey and Avirgan, supra, pp. 7-9.

[407]Deposition of Rob Owen, February 9-10, 1988 (hereafter "Owen Deposition"), p.76-80. Forrest testified that he went along to assess "humanitarian aid" needs. Deposition of Vaughn Forrest, February 16, 1988 (hereafter "Forrest Deposition"), p. 87.

[408]Owen Deposition, supra, p. 372-3.

[409]Deposition of William H. Crone, January 6-7, 1988, pp. 237-8.

The Cover-Up of La Penca

Persons involved in the contra resupply network and the assassination attempt immediately began cover-up activities. Defendant Jones testified that shortly after the bombing, he was asked by Holtz to "get up to La Penca . . . and get any sort of residues that was available" for analysis in Washington. According to Defendant Jones, Holtz told him that every lot of C-4 has a slightly different chemical texture so that it can be traced back to its source "to help in the identification in the event it's used in a terrorist attack." He believed this was the reason for Holtz' request. Jones said that he was not able to get permission from Pastora's people to go to La Penca.[410]

Defendant Jones also testified that C-4 was a very restricted item for the contras -- as opposed to commercially made land mines -- and

> controlled strictly from San Jose . . . every last ounce of it had to be accounted for . . . There was a, I'm sure, a trail of responsibility there, from the Central Intelligence Agency to the specific function for which that amount of explosive would be available . . . For instance, for power lines [that] fed power from . . . Costa Rica to Nicaragua . . .
>
> [T]he Contras, at one point, blew down four or five of those power lines within Nicaragua using C-4 explosives. It was calculated what size the towers were, how to place the explosives, and down to the last ounce, how much would be needed, in what shape. And they were pre-made for that specific

---

[410]Jones Deposition, supra, pp. 243-4.

job.[411]

Another North American sent in from Panama to "help" in the lab work done in Costa Rica to analyze the bomb fragments was much more successful in derailing the investigation. After he left, the detonator which is the "signature" component of a bomb, was missing.

Within 24 hours after the bombing, persons within the CIA and the State Department began a disinformation campaign by providing a story to major newspapers, including the New York Times and the Washington Post, and networks that the bomber was a Spanish Basque terrorist hired by Nicaragua.[412] It was subsequently learned that the alleged "bomber" was under house arrest in France on May 30, 1984.[413] Persons within the U.S. Embassy in Costa Rica also mounted a public campaign to discredit Pastora as a communist and a drug trafficker and worked with Defendant Hull to provide arms to any of Pastora's troops who would defect.[414]

Eden Pastora was clearly the target of the La Penca bombing. His death would eliminate both a political obstacle to the union of ARDE and the FDN and create a situation in which Nicaragua could be accused of the

---

[411]Jones Deposition, supra, pp. 60-1.

[412]The day after the attack, U.S. intelligence sources were quoted on ABC television blaming ETA for the attack. "Jimenez Morales Exonerates ETA of Responsibility for Bombing Attempt," La Prensa Libre, June 5, 1984. Need to find those other stories.

[413]La Nacion, June 10, 1984.

[414]Deposition of Eden Pastora, supra, p. 83.

assassination.[415]

When evidence was gathered from the site by the Civil Guard after the bombing, one item found was a woman's wig, which Guevara identified as having been worn by the woman accompanying "Hansen." "I remember certain things. I hadn't seen that type of hair in anyone before and I saw her at the hotel."[416]

The Organismo de Investigaciones Juridicas (OIJ) of Costa Rica (a government agency comparable to the Federal Bureau of Investigation) conducted an investigation of the bombing and concluded that it had been carried out by "Per Anker Hansen," an alias used by Defendant Galil.[417] The chemical compound used was the explosive C-4, which was located in the suitcase which also contained a remote control device. The bomb was detonated by a radio frequency. OIJ's forensic expert concluded from the debris that the bomb was homemade, contained two to four pounds of a high-powered explosive, plus other types of explosives. The remains were found near eight batteries used for detonation purposes.[418]

"Hansen" was traveling on a false Danish passport stolen in December of 1980 from the Copenhagen apartment of a 28-year-old student, and had entered Costa Rica by land from Panama on February 29, 1984, in the

---

[415]Pastora Deposition, supra, p. 108; other sources?

[416]Guevara Deposition, supra, p. 13.

[417]Cruz Deposition, supra, p. 27, citing official reports attached as Exhibits B, C and G.

[418]Cruz Deposition, supra, pp. 23-27, and Exhibit G (OIJ report entitled "Description of Explosives" prepared by Gustavo Castillo Montoya).

company of a woman named Patricia Anne Boone Marescot, who was traveling on a false French passport. On March 2, he left for Mexico. Between March 3-26, 1984 he was in Honduras.[419] "Hansen" had initially entered Panama on May 17, 1982, and had also traveled to Peru in 1983.[420]

While in Panama City, he had lived in a luxury, high-rise apartment near the university and claimed to be writing a book on Panama. "Hansen" told Torbiornsson that he had been in New York, Miami, Mexico and Honduras before going to Costa Rica. Between March 3 and 26, 1984, "Hansen" and "Boone" were in Honduras at various hotels around the country.[421] "Hansen" appeared to be familiar with Argentine and Uruguayan literature and music and sent post cards to both Uruguay and Chile. He spoke Spanish fluently.[422]

Despite the attack, on June 22, 1984, Pastora attended a meeting in Washington, D.C., at the home of Arturo Cruz at which Carol Prado, Alfredo Cesar, Joe Fernandez (Tomas Castillo), Arturo Cruz and Dewey Clarridge, Alan Fiers (who was going by the name of Albert Fenton) and

---

[419]Honey and Avirgan, supra, p. 10.

[420]Cruz Deposition, supra, Exhibit B (letter from Allan Salano Aguilar, OIJ Special Affairs Office to the Embassy of Peru in Costa Rica) and Exhibit C (report from OIJ Office of Special Affairs to Lic. Mainor Calvo Piedra, OIJ general director).

[421]Honey and Avirgan, supra, pp. 10-11.

[422]Honey and Avirgan, supra, pp. 11-2.

Vincent Cannistraro were present.[423] Clarridge told Pastora that they knew who the identity of the bombers, but needed a few more details before announcing it. Clarridge then offered to help Pastora set up a political movement to be headed by Cruz, Alfredo Cesar and Pastora.[424] On July 5, however, Pastora was told by Fiers that the money --$80,000 a month -- would go to Robelo, not Pastora.[425] During this same period of time, Defendant John Hull was provided with $10,000 per month from Defendant Calero to feed, cloth and provide medical supplies for the contras camped on the Costa Rican border.[426]

During that meeting, Castillo told Pastora that Defendant Hull was part of the CIA, that Hull felt that his life was being "threatened" by Pastora, and that nothing should happen to Hull. Later in Costa Rica, Arturo Cruz, Jr., told Pastora that Oliver North was "annoyed" with Pastora because Pastora blamed him for the La Penca bombing, and "that there are reasons for Oliver North to believe that."[427]

---

[423]Prado Deposition, supra, p. 62. Dewey Clarridge was using the name Maroni Id.

[424]Deposition of Eden Pastora, supra, pp. 84-85.

[425]Pastora Deposition, supra, p. 87-8; Prado Deposition, supra, p. 63.

[426]Statement of John Hull in "CIA Paid Bill to Guard U.S. Rancher Who Aided Contras," The Washington Times, July 24, 1987.

[427]Pastora Deposition, supra, pp. 46-7.

Posey and the CMA

Other defendants were also involved in the operation to actively and illegally supply explosives and military equipment to the contras prior to the La Penca bombing. In July of 1983, Defendant Thomas V. Posey, a Vietnam veteran living in Decatur, Alabama,[428] formed the Civilian Military Assistance (CMA) project, ostensibly to aid the Salvadoran government in its civil war by sending combat instructors and arms.[429] By the fall of 1983, Defendant Posey was taking steps to provide arms and personnel to the contras in Honduras. On November 1, he applied to the Bureau of Alcohol, Tobacco and Firearms for a firearms export license supposedly to buy weapons and ammunition for El Salvador.[430] However, three days later, Defendant Posey to steps to contact the contras in

---

[428]Deposition of Thomas V. Posey, January 11, 1988 (hereafter "Posey Deposition"), p. 16.

[429]Defendant Posey was apparently working with Defendant Singlaub who testified before Congress that in the "early 1980s" he began to assist El Salvador by bringing former U.S. military personnel to El Salvador to provide counter-insurgency training to the army. Singlaub Testimony, supra, p. 184. Robert K. Brown, publisher of Soldier of Fortune and another Singlaub associate, stated that a team he organized trained hundreds of Salvadorans. "U.S. Civilians Fighting Mad," USA Today, (undated).

[430]National Security Archive, The Chronology: The Documented Day-by-Day Account of the Secret Military Assistance to Iran and the Contras (Warner Books, 1987) (hereafter "Chronology"), p. 42.

Honduras.[431] He wrote to Brig. Gen. Gustavo Alvarez Martinez, then chief of the Honduran Army, and offered to help fight with the contras. Alvarez Martinez immediately invited Posey to Honduras and put him in touch with Alfonso Callejas, an FDN official. Callejas encouraged CMA to take on missions to assist the contras.[432]

By the end of December of 1983, Posey had amassed a group of former U.S. military personnel and active members of various U.S. State National Guard units for the purpose of organizing an American-based, paramilitary operation to train, equip, finance and actively participate in military field operations with the contra forces in Central America against the U.S.-recognized government of Nicaragua.[433] These activities violated the Neutrality Act, the Arms Export Control Act and various other state and federal laws.

The mercenaries engaged in CMA's contra support activities were meeting at a certain hotel in Tegucigalpa to finalize their plans for obtaining military equipment for and providing other federally prohibited aid to the contras.

---

[431]"Volunteer Group Asked CIA to Aid in Contacting Rebels," Washington Post, September 12, 1984, citing hearings before the Senate Select Committee on Intelligence.

[432]"Vietnam Vets Sought Last Shot at Communists," Houston Post, September 16, 1984, quoting Posey; "CMA Making War on Drugs," Huntsville Times, July 10, 1986, quoting Posey.

[433]Brian Barger, "Fools Rush In: The Inside Story of Viet Vets in Central America," The VVA Veteran, February 1985.

The planning continued in CMA's executive committee meetings during the early months of 1984. Overtly criminal activities were planned and agreed to by Defendant Posey during those meetings, including violations of the Neutrality Act, the Federal Arms Export Control Act, various federal firearms and explosives statutes and other federal and state laws.

In January of 1984, Posey, CMA's Dana Parker and another CMA member flew down to Honduras in a Piper Cherokee-6 plane piloted by William Courtney from Redstone Arsenal in Alabama to Honduras.[434] Parker, an undercover agent for the Huntsville, Ala., police department, was also commander of the First Detachment, A Company, Twentieth Special Forces Group of the Alabama National Guard, a group used to funnel arms and equipment to the contras.[435] On this trip to Honduras, Posey and his associates brought nine automatic pistols and 400 rounds of ammunition.[436]

Posey claimed that the CMA would prosecute the war against the government of Nicaragua which the U.S. Congress did not have the political conviction to undertake. Posey said, "We decided that civilians could do something if the military couldn't."[437] In an interview with the Huntsville Times in January of 1984, Defendant Posey admitted to participating in patrols with contras along the

---

[434]Chronology, supra, p. 57; Birmingham News, September 14, 1984.

[435]Cockburn, supra, pp. 13, 92-93.

[436]Kornbluh, supra, p. 82; Cockburn, supra, p. 15.

[437]"CMA Making War on Drugs--Posey," Huntsville Times, July 10, 1986.

Nicaraguan border. He said he had fired 300 rounds from his M-1 rifle at Nicaraguan troops "in self-defense", and that his rifle butt had been discolored, perhaps by someone "running into it."[438]

It was Defendant Posey's clear understanding and intention that this military equipment be used against the unarmed civilian population of Nicaragua to terrorize them and destabilize the government. As his activities became more controversial, Posey told the press than his people were only going to train Nicaraguans, but his recruits were told that they would be fighting.[439]

The alleged criminal acts of Defendant Posey include obtaining surplus U.S. military equipment from the 20th Special Forces Unit of the U.S. Army in Alabama and obtaining the use of an allegedly surplus U.S. Armed Forces airplane in New Jersey in which to transport this material from U.S. territory, via Ilopango Air Base in El Salvador, to Costa Rica, Honduras and Nicaragua. Clearly marked U.S. military equipment was observed by mercenary and CMA member Jack Terrell in Defendant Posey's garage, awaiting shipment.[440]

Posey was in close contact with Defendant Adolfo Calero, chief executive officer of FDN. With the assistance of Defendant Calero's brother, Mario Calero,

---

[438]"Soldier Harvest Is Plentiful in Fields of North Alabama," Memphis Commercial Appeal, September 7, 1984.

[439]Coutin Deposition, supra, p. 115.

[440]Jose Coutin also testified that Defendant Posey in early 1985 discussed weapons shipments with Jose Fernandez, a Cuban-American whose family had a weapons factory in Spain. Coutin Deposition, supra, p. 122.

who was the logistics chief for the FDN working out of New Orleans, Defendant Posey arranged for volunteers to go to Central America to train and fight with the Miskito Indians against the government of Nicaragua. By May of 1984, Posey had sent three paramilitary training teams to Honduras.[441] In September, two of CMA's volunteers, Dana Parker and Jimmy Powell, were killed during a contra raid on the Santa Clara military training school in Nicaragua when the helicopter they were in was shot down in Nicaragua.[442]

According to Defendant Calero, Parker, Powell, four other CMA members and Mario Calero had arrived in Honduras only a week earlier, allegedly to do training.[443] However, prior to its implementation, senior U.S. government officials were aware of the planned raid, as well as the participation of the CMA personnel. Lt. Col. Oliver North, who was in Honduras on the day of the raid, reported that he and Dewey Clarridge, the CIA chief of Latin American operations, had "urged that the operation be postponed because the rockets necessary for the attack had to be saved for potential use against the next arms

---

[441]"Two Americans Called Volunteers," Washington Post, September 5, 1984.

[442]"Mystery Man Says He Was Paid to Probe CMA's Contra Efforts," Memphis Commercial Appeal, April 13, 1986; "Nicaraguan Rebels Say U.S. Veterans Help Them," New York Times, September 5, 1984; "Two Americans Called Volunteers," Washington Post, September 5, 1984.

[443]The other Americans included Cliff Allbright, Walter Blanton and Louis McKnight. "Two Americans Called Volunteers," Washington Post, September 5, 1984.

delivery."[444]

The Santa Clara raid was the direct result of Operation Elephant Herd. The raid was carried out by three Cessna O2s, formerly belonging to the New York National Guard, which had been declared "excess" in December of 1983, and the FDN's only helicopter. After being assigned to Operation Elephant Herd, the Cessnas were turned over to Summit Aviation for conversion for military use.[445] The deaths of Parker and Powell resulted in a report by members of the Congressional Arms Control and Foreign Policy Caucus charging that the "apparent failure of U.S. officials to attempt to halt the activities of CMA or other groups sending cash and aid to the contras adds strength to the case that the Neutrality Act may be being violated." The caucus alleged that the Arms Export Control Act, the 1984 Defense Appropriation Act and the Foreign Assistance Act may have been violated.[446]

Operation Pegasus: Invasions and Assassinations

In September of 1984, CMA member Joseph ("Shooter") Adams, a former Marine Corps intelligence officer who trained with the Pentagon's elite DELTA Force command unit and worked as an instructor for a Navy SEAL team, became Defendant Calero's personal

---

[444]Memorandum from Oliver North to Robert McFarlane, dated September 2, 1984, and entitled "FDN Air Attack of 1 September." Iran-Contra Hearings, Exhibit OLN-254.

[445]Cockburn, supra, pp. 12-16.

[446]"Volunteer Group Asked CIA to Aid in Contacting Rebels," Washington Post, September 12, 1984, citing report.

bodyguard, accompanying Calero to most of his appointments. In October of 1984, Jack Terrell (Colonel Flaco), a former mercenary, volunteered to work with Defendant Posey and CMA to form a Green Beret-style special forces unit to fight with the contras.[447]

Defendant Posey, Terrell and other CMA members then began to plan a commando-style raid into Nicaragua with American veterans and contras as part of what was called "Operation Pegasus." Operation Pegasus was a military plan which would culminate in the full-scale American-led invasion of Nicaragua. It involved attacks on key targets in Nicaragua and assassinations of Nicaraguan officials and civilians.[448] Implementation of the plan included conspiracies to commit murder and arson, foreign travel and communications to further crimes of violence, violations of arms export regulation and the commission of other crimes in which a large number of the defendants played a role.

Terrell and other CMA leaders met with Enrique Bermudez, the military leader of the FDN. Terrell and Posey then recruited ten other mercenaries and flew to Honduras in mid-November.[449] The FDN paid their

---

[447]"CIA Role in Arming Contras Seen Larger than White House Has Acknowledged," Wall Street Journal, January 15, 1987.

[448] "Band Beats War Drums for Nicaraguan Strike," Memphis Commercial Appeal, December 4, 1984; Allan Nairn, "The Contras' Little List," The Progressive, March 1987, pp. 24-26.

[449]"CIA Role in Arming Contras Seen Larger than White House Has Acknowledged," Wall Street Journal,

transportation costs. They were originally trained by Frank Camper at a paramilitary school in Alabama.[450] Upon arriving in Honduras, this group reported to the FDN contra bases in Honduras at La Quinta and Las Vegas,[451] where training exercises began. They carried with them rifles, boxes of ammunition and medical supplies. Once in Honduras, their passports and other identification were taken away to prevent identification if they were captured during their raid into Nicaragua. Their first mission abruptly came to an end, however, when the Memphis Commercial Appeal wrote an article about their location and plans after interviewing Jack Terrell.[452]

As part of his plan to develop a military capability in Central America, Defendant Posey requested the help of

---

January 15, 1987.

[450]"Misfortune Tarnishes Honduran Adventure," Memphis Commercial Appeal, December 5, 1984. Traveling with Terrell were Jim Turney of Collierville; David Ormand of Corinth, Miss.; Bob Bradford of Tallahassee, Fla.; Richard Thompson of Lawton, Okla. "Band Beats War Drums for Nicaraguan Strike," Memphis Commercial Appeal, December 4, 1984; "Alabama's CMA Troops Face Hard Time in Jungle," Birmingham News, June 13, 1985.

[451]"CIA Role in Arming Contras Seen Larger than White House Has Acknowledged," Wall Street Journal, January 15, 1987.

[452]"Band Beats War Drums for Nicaraguan Strike," Memphis Commercial Appeal, December 4, 1984. "Alabama's CMA Troops Face Hard Time in Jungle," Birmingham News, June 13, 1985.

the Cuban Legion, which was already supporting Defendants Corvo's and Vidal's efforts in Costa Rica.[453] Jose Coutin, a Legion member, became Posey's "recruiting director" in December 1984 to find Cuban-Americans not only for training, but for combat roles.[454] At approximately the same time, Defendant Posey went to Costa Rica to meet with Defendant Hull and determine how he could further help the southern front.[455]

A Second Conspiracy to Assassinate Pastora

In December of 1984, Defendant Calero suggested to Jack Terrell that Terrell meet with Defendant Hull to discuss training contras on Hull's ranch. Calero made the arrangements by giving Terrell a telephone number in Denver, Colorado, where Hull could be reached. Terrell then called Hull and arranged a meeting in Houston.[456] Two weeks later, Terrell and CMA member Lanny Duyck met with Defendant Hull, who was accompanied by Defendant Owen, at the Shamrock Hilton Hotel in Houston. They discussed the need to have American mercenaries train contras in Costa Rica to strengthen the southern front based on Hull's ranch and to take over from Pastora. The mercenaries were to carry out combat attacks against Nicaragua. When Terrell asked how this operation would be financed, Owen claimed that he took $10,000 per month to Hull from the National Security Council and could get more if needed. When Terrell

---

[453]Coutin Deposition, supra, pp. 112-116.

[454]Coutin Deposition, supra, p. 81-83.

[455]Jones Deposition, supra, p. 132.

[456]

brought up the fact that Eden Pastora already had forces in the southern front, Hull went into a tirade, calling Pastora a communist and declaring that Pastora had to be killed. Terrell was then asked to formulate a plan to kill Pastora.[457]

Two weeks later, a larger group of American mercenaries, including Defendant Posey and Terrell, and contras met at Defendant Calero's home in Miami to continue planning this second assassination attempt on Pastora.[458] Terrell listed those in attendance as Defendants Calero, Owen, Posey, Hull, Vidal and Galil, Joe Adams, Donald Lecayo (an associate of Hull's),

---

[457] Testimony of Jack Terrell in Hull v. Avirgan and Honey, a libel case tried in the First Penal Court in San Jose, Costa Rica, on May 22, 1986, reprinted in La Penca: On Trial in Costa Rica (hereafter "Terrell Testimony"), pp. 84-7. "Mercenary Places Owen at Talks on Pastora Killing," Providence Sunday Journal, May 10, 1987; Cockburn, supra, pp. 69-70. Defendant Owen admitted that he attended this meeting. He said that Terrell proposed sending down 200-300 Americans to the southern front, and Posey wanted to train the contras on Hull's ranch under the aegis of a commander named Jesus. At that point, Owen said he left the meeting to call Aldolfo Calero and Oliver North to ask why Hull was talking to Terrell. He stated that he was out of the room for approximately 15 minutes (to call North and Calero) so and did not know what was discussed when he was gone. Owen Deposition, supra, pp. 236-239, 245.

[458] Terrell Deposition, supra, Exhibit 2; Allan Nairn, "The Contras' Little List," The Progressive, March 1987, pp. 24-26; "Mercenary Places Owen at Talks on Pastora Killing," Providence Sunday Journal, May 10, 1987.

Enrique Bermudez, Aristides Sanchez (a member of the FDN directorate), a Cuban named Rojas and Lanny Duyck.[459] In his testimony in Costa Rica, Terrell described the meeting as follows:

> The purpose of the meeting was to obtain approval of the FDN Directorate to carry out the Costa Rican plan. In this meeting, we discussed the same things as in the other, but in this meeting it was decided that I would not go to Costa Rica but rather that Tom Posey would go instead. That he would remain for a week, reviewing the situation

---

[459]Terrell Testimony, supra, p. 85; Allan Nairn, "The Contras' Little List," The Progressive, March 1987, pp. 24-26; "Mercenary Places Owen at Talks on Pastora Killing," Providence Sunday Journal, May 10, 1987. Defendant Owen has confirmed that this meeting took place. Owen stated that there "may have been" a discussion of contra unification at the meeting, and that some people said that Pastora was "a difficult person to work with," but that the discussion concerned Terrell's offer to sell weapons from the Miskito Indians to the other contra groups, and Posey's and Adams' plans to send men from Costa Rica and Honduras to go inside Nicaragua and blow up bridges. Owen Deposition, supra, pp. 250-260.

Jose Coutin, who planned to attend the meeting, but did not, was briefed by Terrell, Adams and Posey after the meeting and was informed that Defendants Chanes and Corvo. Coutin testified that he had sent Marcellino Rodriguez to pick up Posey and Terrell and take them to Calero's home. After the meeting, Coutin, Posey and Terrell met at the Howard Johnson Motel near the airport. Coutin Deposition, supra, pp. 86-96.

> and later he would report it back to me. During this meeting we spoke of the same things, including Eden Pastora, and the financing or who would pay and the overall plan for Costa Rica because the new front would be known as UNIR. Adolfo Calero was angry with statements made by Pastora. He said that Pastora had said that the FDN was homicidal, Somicista sons of bitches. He stated in the presence of these people that Pastora had to go. I knew nothing about Pastora with the exception of what I had heard.

Terrell testified that the group also conspired to kill Pastora. "All these people who were present knew what we were discussing and no one was negative about what we had discussed. I raised the question with my friends that were present that if a person from the National Security Council and the CIA were present, then we must have approval from the U.S. Government to carry out these acts that could put us in prison or get us killed for what we knew."[460]

During the meeting, Defendant Vidal told Terrell that Defendant Galil was a Mossad official "and . . . he used the name of Amac Galil. . . During the meeting in Calero's house Felipe stated that "we put a bomb under him [Pastora] and it didn't work because of bad timing."[461] Terrell later construed this to be a reference to the La Penca bombing.[462]

---

[460]Terrell Testimony, supra, pp. 84-87.

[461]Terrell Testimony, supra, p. 88

[462]"Mercenary Places Owen at Talks on Pastora Killing," Providence Sunday Journal, May 10, 1987.

Terrell's contemporaneous notes of the meeting recorded the following:

> The 'termination' of Zero [Pastora] discussed . . . . Adolfo Calero very upset with statements made by Pastora. Says he too Sandinista. Must die. Big problem. Asks me to put it together and note to tell them how it will be done. Seems Rob Owen is in on most of this . . . . Must appear that Sandinistas did it. Discussion on capturing Zero and having men dress in captured uniforms. Am told this must be very visible hit and people must believe the Sandinistas did it. Am told to let Hull know when ready to move . . . . A.C. open to anything. He desperate. Wants and needs southern front."[463]

Terrell then formulated a plan to kill Pastora and make it appear as though the Sandinistas had done it. Defendants Calero and Hull were to be participants in the attempt. However, Terrell decided to abandon the plan as too risky.[464]

---

[463]Deposition of Jack Terrell, February 25, 1988 (hereafter "Terrell Deposition"), Exhibit 5 (excerpts from diary of Jack Terrell); "The Dirty Dealing in the underground Contra Aid Network," In These Times, December 10-6, 1986.

[464]"Mercenary Places Owen at Talks on Pastora Killing," Providence Sunday Journal, May 10, 1987. Terrell is quoted as saying: "You got...two members of the U.S. government in there [Hull and Owen]...listening...and I don't see a no vote in the house. So I start feeling funny about the whole thing." Terrell figured that such